IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

Original No. .

EX PARTE: IN THE MATTER OF RAMON BAEZ,
PETITIONER.

Transcript of Record.

On Petition for Habeas Corpus and Certiorari to Samuel C. Bothwell and the United States Provisional Court, Department of Puerto Rico.

In the United States Provisional Court for the Department of Puerto Rico.

UNITED STATES OF AMERICA, *Department of Puerto Rico,* } *To wit:*

Be it remembered that J. M. Keedy, United States attorney for the provisional court for the department aforesaid, who for said court in this behalf prosecutes in his own proper person, cometh into the said provisional court at San Juan, in the department aforesaid, and giveth the said court here to be informed and understand that Ramon Baez on the 31st day of October, A. D. 1899, at Guayama, in the department aforesaid, at a meeting of the inhabitants of

said Guayama and said municipal district, at the public election of one alcalde, one municipal judge, one suplente municipal judge, five school trustees, and twelve councilmen in Guayama aforesaid, then and there duly held, well knowing himself not to be a qualified voter, did fraudulently vote and did willfully give in a vote for the officers aforesaid, being the officers to be chosen, contrary to the law in such cases made and provided and against the peace, government, and dignity of the same.

Wherefore the said United States attorney prays the due process of this court against the said Ramon Baez, and that he may be held to answer the United States in the premises.

J. M. KEEDY,
U. S. Attorney.

UNITED STATES OF AMERICA, *Department of Puerto Rico,* } *ss:*

I, J. M. Keedy, U. S. attorney, do solemnly swear that the allegations of the foregoing information *is* based upon the testimony of witnesses duly sworn before me, and that I verily believe that the facts therein alleged, if true, constitute the crime therein charged.

——.

Subscribed and sworn to before me this 10th day of November, 1899.

ROBERT ALEXANDER,
Clerk U. S. Provisional Court.

In the United States Provisional Court for the Department of Puerto Rico.

UNITED STATES OF AMERICA, *Department of Puerto Rico,* } *To wit:*

Be it remembered that J. M. Keedy, United States attorney for the provisional court for the department aforesaid, who for said court in this behalf prosecutes in his own proper person, cometh into the said provisional court at San Juan, in the department aforesaid, and giveth the said court here to be informed and understand that on the 31st day of October, A. D. 1899, at Guayama, in the department

aforesaid, at a meeting of the inhabitants of said Guayama and said municipal district, a public election was [legally and duly held]* held.

That at said public election, as aforesaid, the name of Ramon Baez appeared upon the list of qualified voters, and that said name was transferred to said list of qualified voters from the records of tax-payers and property-owners of said municipality, whereon it had been illegally and fraudulently placed; that said Ramon Baez well knew that he was not a legal and *bona fide* tax-payer or owner of property, qualified thereby to vote at said election, and that he had no other qualification to entitle him to cast a vote at the election aforesaid.

The United States attorney further gives the said court to be informed and understand that, notwithstanding the premises, the said —— ——, well knowing himself not to be an owner of property upon which taxes are assessable, and well knowing that his name should not appear or be recorded as a tax-payer on said records of the municipality as such tax-payer, and well knowing that his name should not appear on the voting lists of said municipality aforesaid, and that he was not qualified to vote at said election, falsely, fraudulently, and wilfully voted and gave in a vote at the election aforesaid for the officers to be chosen aforesaid, well knowing the same to be a false and fraudulent vote, contrary to the law in such cases made and provided and against the peace, government, and dignity of the same.

Wherefore the said United States attorney prays the due process of this court may issue against the said Ramon Baez, and that he may be held to answer the United States in the premises.

J. M. KEEDY,
U. S. Attorney.

UNITED STATES OF AMERICA, } *ss:*
Department of Puerto Rico, }

I, J. M. Keedy, U. S. attorney, do solemnly swear that the allegations of the foregoing information are based upon the testimony of witnesses duly sworn before me, and that I

* Stricken out on motion of district attorney, December 7, 1899.

verily believe that the facts therein alleged, if true, constitute the crime therein charged.

——— ———.

Subscribed and sworn to before me this 4th day of December, 1899.

ROBERT ALEXANDER,
Capt. 14th Infantry, Clerk of Court,
By P. DE CASTRO,
Deputy Clerk.

In the United States Provisional Court, Department of Puerto Rico.

SAN JUAN, P. R., *November 11th*, 1899.

The court met, pursuant to adjournment, at 9 a. m.

Present: Hon. N. B. K. Pettingill, law judge; Major E. D. Dimmick, ass't judge; Major E. D. Thomas, ass't judge; Hon. J. M. Keedy, U. S. dist. attorney; Captain Robert Alexander, 14th infantry, clerk U. S. provisional court; Samuel C. Bothwell, U. S. marshal.

Court Record, page 159.

THE UNITED STATES *vs.* RAMON BAEZ. } Criminal Trial No. 58. Information for Fraudulent Voting.

Now comes J. M. Keedy, U. S. district attorney, and presents to the court the aforementioned information.

* * * * * * *

The court then, at 10.40 a. m., adjourned until 5 p. m. this date.

SAN JUAN, P. R., *December 1st*, 1899.

At the indicated hour (2 p. m.) the court reassembled.

Present: All the officers of the court.

* * * * * * *

The court then promulgated the following order:

It appearing from the records of this court that a large number of criminal cases involving illegal voting at the

recent municipal election of Guayama are pending in this court, and that both convenience and economy require that they be tried at Guayama:

It is hereby ordered that this court convene in special term, at the city of Guayama, on the 4th day of December, at ten o'clock a. m., for the trial of the causes aforesaid and for the transaction of such other business as may properly come before it.

It is further ordered that the cases upon the dockets of the district of San Juan as criminal trials, numbered from 58 to 143, inclusive, be, and the same are hereby, transferred to the docket of the said special term hereby convened by the court in open court this 1st day of December, 1899.

(Signed) N. B. K. PETTINGILL.

The court then adjourned at 3 p. m. to meet again at 10 o'clock a. m., December 15th, 1899.

GUAYAMA, PUERTO RICO, *December 4th*, 1899.

The court met in special session, as provided for by the order heretofore issued, at San Juan, at 10 o'clock a. m.

Present: All the officers of the court.

Court Record, page 200.

THE UNITED STATES *vs.* RAMON BAEZ. } Criminal Trial, No. 58.

Now comes J. M. Keedy, U. S. district attorney, and presents to the court amended information in the above-entitled cause.

GUAYAMA, P. R., *December 7th*, 1899.

The court reassembled at the indicated hour (2 p. m.).

Present: All the officers of the court.

THE UNITED STATES *vs.* RAMON BAEZ. } Criminal Trial No. 58.

In the above-entitled cause the accused is brought to the bar, and the district attorney asks permission to amend the

amended information heretofore filed in this behalf by striking from the first clause thereof the words "legally and duly;" which permission is granted by the court.

Whereupon the accused, by his counsel, F. H. Dexter, presents to the court a motion to quash the amended information heretofore presented, as aforesaid, which *are* in words and figures as follows:

In the United States Provisional Court for the Department of Puerto Rico, Sitting at Guayama.

THE UNITED STATES
vs.
RAMON BAEZ. } Motion to Quash Information.

The above-named defendant moves this court to quash the second amended information filed herein for the following reasons, to wit:

First. Because the proceedings heretofore had are irregular and void.

Second. Because no indictment or presentment has been returned — the grand jury against this defendant, as required both *of* the common law and the laws of the United States.

RAMON BAEZ, *Defendant*,
By his counsel, F. H. DEXTER.

Motion overruled.
Guayama, Dec. 4, 1899.
N. B. K. PETTINGILL,
Law Judge.

Whereupon the court, after due consideration, overrules said motion; to which ruling the accused, by his counsel, notes objection.

Whereupon the accused, by his counsel, F. H. Dexter, presents to the court a demurrer to the amended information heretofore filed, as aforesaid, which *are* in words and figures as follows:

In the United States Provisional Court for the Department of Puerto Rico, Sitting at Guayama.

THE UNITED STATES *vs.* RAMON BAEZ. } Demurrer to Information.

The above-named defendant, Ramon Baez, demurs to the second amended information filed against him for the following reasons, to wit:

First. That it does not set out an offense under the laws of the United States or for the department of Puerto Rico cognizable by this court.

RAMON BAEZ, *Defendant.*
By his att'y, F. H. DEXTER.

Foregoing demurrer is overruled. Guayama, Dec. 7, 1899.

N. B. K. PETTINGILL,
Law Judge.

Whereupon the court, after due consideration, overrules said demurrer; to which ruling the accused, by his counsel, notes objection.

Whereupon the accused is duly arraigned upon said amended information, pleading thereto "Not guilty."

Now comes the accused in the above-entitled cause and presents to the court a request that he be tried by a jury, which asking being denied by the court, the accused, by his counsel aforesaid, notes an exception to said ruling.

Whereupon the court proceeds with the trial of said cause, hearing the testimony of the following witnesses, they being first duly sworn according to law and placed under the rule, viz:

For the prosecution: Julio Brenes, Guillermo Alvarez, Luis Texidor, Domingo Gallart, Vicente Belgodere, Francisco Menard, and Felix Maas.

The court then, at 5.30 p. m., adjourned to meet again tomorrow morning, the 8th inst., at 9 a. m.

GUAYAMA, P. R., *December 8th*, 1899.

The court met, pursuant to —, at 9 a. m.
Present: All the officers of the court.

THE UNITED STATES
vs.
RAMON BAEZ. } Criminal Trial No. 58.

In the above-entitled cause the accused is brought to the bar and the court continues the trial thereof, hearing the testimony of the following-named witnesses, they being first duly sworn according to law and placed under the rule, viz:
For the prosecution: Antonio Grace, Vicente Belgodere, Teodosio Vigoreux, Enrique Gonzalez.

The court then at 11.30 a. m. adjourned until 2 p. m. this day.

GUAYAMA, PUERTO RICO, *December 8th*, 1899.

At the indicated hour (2 p. m.) the court reassembled.
Present: All the officers of the court.

* * * * * *

Court Record, page 211.

THE UNITED STATES
vs.
RAMON BAEZ. } Criminal Trial No. 58.

In the above-entitled cause the accused is brought to the bar and the court proceeds with the trial of said cause, hearing the evidence of the following-named witnesses, they being first duly sworn and placed under the rule, as aforesaid, viz:
For the prosecution: Jules Brenes, Fernando Lugo Viña, Luis Coy.
Whereupon the court rests.
Now comes the accused, and, by his counsel, moves the court to dismiss the amended information heretofore presented in his behalf.
Whereupon the court takes said motion under advisement and at 4.45 p. m. adjourns to meet again at 9 a. m., tomorrow, the 9th inst.

Court Record, page 212.

GUAYAMA, PUERTO RICO, *December 9th*, 1899.

The court met, pursuant to adjournment, at 9 a. m.
Present: All the officers of the court.

THE UNITED STATES
vs.
RAMON BAEZ. } Criminal Trial No. 58.

Now comes the district attorney, asking permission to reopen the prosecution for the purpose of introducing additional evidence, which asking is granted with the stipulation that said evidence be not cumulative.

Whereupon, the accused being brought to the bar, the court proceeds with the trial of said cause, hearing the testimony of the following-named witnesses, they being first duly sworn and placed under the rule as aforesaid, viz:

For the prosecution: Rafael Capo, Nicolas Alonso, Teodosio Vigorreaux.

Whereupon the prosecution rests.

Whereupon the court, announcing its decision upon the motion to dismiss heretofore presented on behalf of the defendant, overrules said motion.

Now comes the defendant and, by his counsel, presents an application for a continuance of the trial of said cause and other causes of like nature now pending before this court, alleging reasons therefor.

Whereupon the court, after argument and due consideration, dismiss- said application and directs the defendant to proceed with the presentation of his case.

Whereupon the following-named witnesses *are* heard for the defense, said witnesses being first duly sworn and placed under the rule, viz: Dr. Tomas Vasquez.

The court then at 11.30 a. m. adjourned to meet again at 2 p. m. this day.

Court Record, page 213.

GUAYAMA, PUERTO RICO, *December 9th*, 1899.

At the indicated hour (2 p. m.) the court reassembled. Present: All the officers of the court.

THE UNITED STATES
vs.
RAMON BAEZ. } Criminal Trial No. 58.

In the above-entitled cause the accused is brought to the bar, and the court continues the trial of said cause, hearing the testimony of the following-named witnesses, they being duly sworn and placed under the rule as aforesaid, viz:

For the defense, Jose Gual; Ramon Baez, the defendant; Dr. Jose Diaz, Celistino Dominguez.

Whereupon the defense rests, and the court takes the case under advisement until the hour of 5 p. m. this date, at which hour the court reassembled and the accused is brought to the bar.

Whereupon the court, announcing its decision, find the accused guilty as charged in the information, and does sentence him, Ramon Baez, to be confined for the period of two months.

Now comes the said Ramon Baez and by his counsel, F. H. Dexter, presents motions in arrest of judgment and for a new trial, which are in words and figures as follows:

In the United States Provisional Court for the Department of Puerto Rico, Sitting at Guayama.

UNITED STATES
vs.
RAMON BAEZ. } Motion to Arrest.

Now comes the defendant above and moves the court to arrest entry of judgment and sentence herein for these reasons:

First. That the defendant was illegally arrested and tried without a jury.

Second. That the information is fatally defective, in that

it does not set out or allege an offence cognizable by this court.

Third. Because the record is defective and fails to show a compliance with the law.

F. H. DEXTER,
Att'y for Def't.

Whereupon the court, after due consideration, overruled said motion; to which ruling the accused, by his counsel, notes exception.

The court then, at 5.25 p. m., adjourned to meet again on Monday next, the 11th inst., at 9 a. m.

GUAYAMA, P. R., *December* 11, 1899.

The court met, pursuant to adjournment, at 9 a. m.
Present: All the officers of the court.

THE UNITED STATES *vs.* RAMON BAEZ. } Criminal Trial No. 58.

In the above-entitled cause the accused is brought to the bar, and the court mitigates the sentence heretofore pronounced against him, the said Ramon Baez, by remitting the imprisonment to thirty days at hard labor.

Whereupon F. H. Dexter, counsel for all the above-named accused, moves the court for a stay of execution to make application to the United States Supreme Court to review the judgment in said causes, which are in words and figures as follows:

In the United States Provisional Court for the Department of Puerto Rico.

THE UNITED STATES *vs.* RAMON BAEZ. } Application for Stay of Execution.

Now comes Ramon Baez and moves the court for a stay of execution herein for the reason that he desires to make application to the Supreme Court of the United States for a

writ of — or other suitable process to review the judgment herein.

F. H. DEXTER,
Att'y for the Def't.

Whereupon said motion was granted in accordance with the provisions or paragraph 11 G. O., No. 88, C. S., upon defendant Tomas Vasquez giving bond in the penal sum of twenty-five hundred dollars and all other defendants in the penal sum of three hundred dollars with proper conditions.

The court then adjourned the special term at Guayama *sine die.*

SAN JUAN, P. R., *January 17th*, 1900.

At the indicated hour (2 p. m.) the court reassembled.

Major E. D. Dimmick still absent on account of sickness, all the other officers of the court being present.

THE UNITED STATES
vs.
RAMON BAEZ. } Cr. Tr., Information for.

In the above-entitled cause the court hears argument upon the motion heretofore presented therein in arrest of judgment and for a new trial.

Whereupon the court postpones further hearing in this behalf until Friday next, the 19th inst.

SAN JUAN, P. R., *January 22nd*, 1900.

The court met, pursuant to adjournment, at 10.30 a. m.

Present: All the officers of the court.

THE UNITED STATES
vs.
RAMON BAEZ. } Criminal Trial No. 58.

In the above-entitled cause the court denies the motion in arrest of judgment and for a new trial heretofore submitted in said cause.

United States Provisional Court, Sitting in Chambers.

SAN JUAN, P. R., *Feb'y 23rd*, 1900.

UNITED STATES *vs.* RAMON BAEZ. } Criminal Trial No. 58.

Defendants in above-entitled cause are allowed until March 16th, 1900, to file application for continuance in Supreme Court.

(Signed) N. B. K. PETTINGILL,
Law Judge.

In the United States Provisional Court for the Department of Puerto Pico, Sitting at Guayama.

THE UNITED STATES *vs.* RAMON BAEZ. } Cr'l T'ls No. 58.

Counsel for defence requests that a jury be empannelled to try this case.

Denied. Exception.

In the Provisional Court of the United States for the Department of Puerto Rico.

UNITED STATES *vs.* RAMON BAEZ.

I hereby certify that the foregoing is a true and correct copy and transcript of the record of this court in the case of The United States *vs.* Ramon Baez, as the same appears of record in my office.

[Seal of United States Provisional Court, Puerto Rico, 1899.]

(Signed) ROBERT ALEXANDER,
Clerk of the U. S. Provisional Court for the Department of Puerto Rico;
By B. W. BATES, *Deputy Clerk.*

Attest: N. B. K. PETTINGILL,
Presiding Judge of said Court.

[Two one-dollar internal-revenue stamps cancelled.]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

Original No. —.

EX PARTE: IN THE MATTER OF THE APPLICATION OF RAMON BAEZ, PETITIONER.

Application for Leave to File Petition for Writs of Habeas Corpus and Certiorari.

Now comes the above-named Ramon Baez, by his attorneys, and moves this honorable court for leave to file the accompanying petition for writ of *habeas corpus* and of *certiorari*, and to have the same entered upon the original docket of this court for the current term.

The grounds upon which such motion and application are based are set forth at length in the petition itself.

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
Attorneys for Petitioner.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

Original, No. .....

EX PARTE: IN THE MATTER OF RAMON BAEZ,
PETITIONER.

Petition for Writ of Habeas Corpus and of Certiorari.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Ramon Baez, by Tulio Larrinaga, for him and in his behalf, respectfully shows that he is a native-born inhabitant of the island of Puerto Rico, formerly a dependency of the Kingdom of Spain, but at the time of the occurrences hereinafter narrated belonging to and forming a part of the territory of the United States of America.

Your petitioner was also formerly a subject of His Imperial Majesty the King of Spain, but since long prior to the occurrences herein complained of and ever since, to and including the present time, he has neither owed nor acknowledged allegiance to any other nation or sovereignty than that of the United States of America.

Your petitioner represents unto this honorable court that he is wrongfully, improperly, unjustly, and illegally imprisoned and restrained of his liberty at Humacoa, in and on said island of Puerto Rico, by one Samuel C. Bothwell, called and styled as and being the marshal of the United States provisional court for the department of Puerto Rico.

By act of Congress approved April 25, 1898, it was declared that a state of war had existed and then existed between the United States of America and the Kingdom of Spain, and thereafter, in the course of the prosecution of such war, the military forces of the United States invaded and conquered the island of Puerto Rico and have ever since remained in possession and control thereof.

December 10, 1898, a treaty of peace was signed at Paris, France, between the duly accredited representatives of the United States of America and Her Majesty the Queen Regent of Spain; and the same having been duly reported to the Senate of the United States, ratification thereof was advised by the Senate on February 6, 1899, and, having been ratified by the President of the United States on said date and subsequently by Her Majesty the Queen Regent of Spain, ratifications thereof were exchanged at Washington on the 11th day of April, 1899, and the treaty was proclaimed by the President of the United States on the same day.

By said treaty it was provided, among other things, as follows:

ART. II. "Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, * * *"

ART. XI. "All Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such courts,

and to pursue the same course as citizens of the country to which the courts belong."

Prior to the ratification of said treaty of peace and on or about the 12th day of August, 1898, a protocol or agreement between the United States and the Kingdom of Spain was signed at the city of Washington by the representatives of the two nations, under and by virtue of the terms of which a suspension of hostilities between said nations was declared by the President of the United States.

By article IV of the said protocol it was agreed that Spain should evacuate Porto Rico and that commissioners should be appointed by the signatory powers for the purpose of arranging and carrying out the details of such evacuation.

Thereafter an evacuation commission was appointed by the President of the United States, and a similar commission was appointed by the government of Spain, and the commissioners subsequently assembled in the city of San Juan, Porto Rico, and duly arranged the terms of such evacuation, which were accepted by the respective governments, and the evacuation and retirement of the Spanish forces from the island of Puerto Rico occurred on the 18th day of October, 1898.

Thereupon, and on said date, Major General John R. Brooke, commanding the forces of the United States, in compliance with the orders of the President, assumed the government of the said island of Porto Rico, and by General Order No. 1, of said date, established the military "Department of Puerto Rico."

Said order, among other things, contained the following:

"The provincial and municipal laws, in so far as they affect the settlement of private rights of persons and property and provide for the punishment of crime, will be enforced unless they are incompatible with the changed conditions of Porto Rico, in which event they may be suspended by the department commander."

Your petitioner further shows that after said 12th day of August, 1898, hostilities ceased to exist in the island of Porto Rico between the forces of the United States and of Spain, and that since the 11th day of April, 1899, war has ceased to exist between the nations, and also since the last-named date, if not prior thereto, there has been and is now a condition of peace existing throughout said island of Porto Rico, and there has been neither a state of war with any foreign power in the said island, nor has there been any internal or domestic rebellions, revolutions, or dissensions, nor any failure to recognize the authority and sovereignty of the United States.

Since the occupation of Porto Rico by the United States authorities the civil courts of that island have been in session exercising the same jurisdiction and in substantially the same form as during the Spanish occupation of the island, and such courts were exercising their ordinary civil and criminal jurisdiction during all of the times hereinafter mentioned.

On the 27th day of June, 1899, by General Order No. 88, of Brigadier General George W. Davis, United States Army, then commanding the department of Porto Rico, and the supreme military authority in said island, there was established a "United States Provisional Court for the Department of Porto Rico."

Said General Order 88, among other things, provides as follows:

"SEC. II. The judicial power of the provisional court hereby established shall extend to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution, and to all common-law offenses within the restrictions hereinafter specified."

"SEC. IV. The decisions of said court shall follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules and records shall conform as nearly as practicable to those observed and kept in said Federal courts. * * *

"SEC. V. The provisional court shall consist of three judges, one of whom shall be known as the law judge, and the other two as associate judges, one United States district attorney, one marshal, one clerk, three deputy clerks, one stenographer and reporter, one interpreter, one bailiff and janitor, and one messenger. The law judge shall preside and shall determine and decide all technical questions of law. A majority vote of the bench shall determine all questions of fact. The jury system may be introduced or dispensed with in any particular case in the discretion of the court.

"SEC. VI. The judges of the provisional court shall be clothed with the powers vested in the judges of the circuit or district courts of the United States.

"SEC. VII. The district attorney shall be authorized to present to the court information against all parties for violations of United States statutes and regulations. He shall also in like manner present informations for violations of orders issued by the department commander relating to civil matters, which may be referred to him from these headquarters. * * *

"SEC. VIII. In order to define more clearly certain branches of the criminal jurisdiction of the provisional court, it is hereby provided that it shall include and be exclusive in the following classes of cases:

"1st. All offenses punishable under the statutory laws of the United States, such as those indicated in paragraph I of this order;

"2nd. Offenses committed by or against persons, foreigners or Americans, not residents of this department, but who may be traveling or temporarily sojourning therein, or against the property of non-residents.

"3rd. Offenses against the person or property of persons belonging to the army or navy, or those committed by persons belonging to the army or navy, not properly triable by military or naval courts; but not including minor police offenses.

"4th. Offenses committed by or against foreigners or by or against citizens of another State, district or Territory of the United States, residing in this department."

"SEC. XI. If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such

judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree. But if at the end of said ninety days such process has not been issued by the Supreme Court execution shall forthwith issue."

"SEC. XVI. The court shall adopt an appropriate seal which shall be procured by the treasurer of the island. The clerk of the court shall have the custody of the seal for use in attesting legal documents in the usual manner.

"SEC. XVII. In accordance with the provisions of paragraph V of this order the following appointments are announced to take effect July 1st, 1899:

"To be law judge: Noah Brooks Kent Pettingill.

"To be provisional United States attorney: J. Marbury Keedy.

"The following officers are hereby detailed on the special duty set opposite their respective names:

"Major Eugene D. Dimmick, 5th U. S. cavalry.	Associate judges of the U. S. provisional court.
"Major Earl D. Thomas, 5th U. S. cavalry.	
"1st Lieutenant Robert Alexander, 11th U. S. infantry.	Clerk of the U. S. provisional court.

"Private Samuel C. Bothwell, troop D, 5th U. S. cavalry, is detailed on special duty as marshal of the U. S. provisional court."

By General Order 216 of said department, dated December 18, 1899, section XI of General Order 88, hereinbefore set forth, was amended so as to read as follows:

"If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make ap-

plication to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree.

"For good cause, this court may extend the time of filing such application and record in the office of the clerk of the supreme or appellate court aforesaid.

"The stay of execution granted by this court shall be in force until the final disposition of the case by the supreme or appellate court aforesaid, provided that the party availing himself of the provisions of this section shall not be guilty of negligence in prosecuting his application before the said supreme or appellate court."

On the 21st day of September, 1899, by General Order 145 of said department, issued by Brigadier General George W. Davis, United States Army, as aforesaid, provision was made for the holding of municipal elections in said island of Porto Rico, and certain rules and regulations governing the right of the inhabitants to vote at such elections and the manner of exercising such suffrage were therein provided for, among others the following:

"SEC. V. An elector to vote at such elections shall possess the following qualifications:

"*a.* He must be a *bona fide* male resident of the municipality.

"*b.* He must be over twenty-one years of age.

"*c.* He must be a tax-payer of record at the date of his registration, or he must be able to read and write.

"*d.* He must have resided upon the island of Puerto Rico for two years next preceding the date of his registration, and for the last six months of said two years within the municipality where the election is held."

Thereafter, by General Orders 160 of said department, issued October 12, 1899, General Orders 145 were amended so as to read in part as follows:

"SEC. VIII. He must be a tax-payer of record in the municipality in which he votes at the date of this order, or he must be able to read and write. Persons who pay insular or municipal taxes of any kind, in their own right or name, or in the name of their lawful wife or minor child, or the members of a firm, corporation, or copartnership, paying taxes, and the heirs of an estate that pay taxes, are deemed tax-payers under the meaning of this clause. But administrators, guardians, trustees, agents, or other persons who pay taxes for other than themselves or their lawful family are not tax-payers within its meaning through such payment."

"SEC. XVI. Any person who fraudulently votes, or attempts or offers to fraudulently vote, or attempts to influence or control others to fraudulently vote, at any public election, shall, upon conviction thereof, be subject to a fine not exceeding one hundred dollars, or to imprisonment at hard labor not exceeding three months, or to both such fine and imprisonment, in the discretion of the court."

Thereafter, by special orders of the military authorities commanding the said department, an election was ordered to be held on the 31st day of October, 1899, in the city of Guayama, Porto Rico, for the election of the ordinary municipal officers of said city to fill the offices in the plan of civil government established by the military authority of the United States.

Your petitioner represents that, being duly qualified in accordance with law and the general orders aforesaid, he voted at said election for the candidates of the party to which he belonged, and thereafter, on or about the 10th day of November, 1899, he was arrested and taken into custody by one Samuel C. Bothwell, marshal of said United States Provisional Court of the Department of Porto Rico, and brought before said provisional court, and was there charged by the district attorney thereof, in an information or complaint which was read to him, with having illegally voted at the said election in the city of Guayama heretofore mentioned.

Your petitioner pleaded "Not guilty" to said charge, and thereafter said United States provisional court proceeded to try him for said alleged offense, although your petitioner objected to the jurisdiction of said court and denied that he had committed any crime or offense cognizable by said court, and further objected on the ground that no presentment or information had been returned by a grand jury, and further that he was deprived of a trial by jury in said cause, a jury trial having been demanded by him and refused by said court.

After hearing the evidence in said proceeding, said provisional court found your petitioner "Guilty," and sentenced him to imprisonment at hard labor in the jail of Humacao, Porto Rico, for a period of thirty days.

Thereupon, in accordance with the provisions of section XI of General Orders 88, as amended and heretofore referred to, your petitioner applied for a stay of execution of ninety days, to permit him to make application to this honorable court for a writ of *certiorari* or other suitable process, to review the action, and to set aside the judgment of said provisional court.

Such application was granted; and the time allowed under said section having expired, your petitioner has been taken into custody by the said Samuel C. Bothwell, marshal as aforesaid, and is by him now unlawfully restrained of his liberty and compelled to perform infamous tasks.

The proceedings of said United States provisional court are set forth at large in the duly certified copy of the transcript of the record in said court submitted herewith.

Your petitioner further alleges that he is advised that said United States Provisional Court for the Department of Porto Rico had no jurisdiction or lawful authority under the Con-

stitution and laws of the United States to cause the arrest of your petitioner or to proceed against him in manner and form aforesaid, and that said pretended process, arrest, order, trial, and judgment, and warrant whereby your petitioner was committed to the custody of the said Samuel C. Bothwell, and whereby, in custody of said Samuel C. Bothwell, he is imprisoned and restrained of his liberty, as aforesaid, were and are, each and all of them, in violation of the Constitution of the United States and the just rights of your petitioner, and are without authority of law and void.

Your petitioner further alleges that said United States provisional court had no jurisdiction to try him for the alleged offense with which he is charged for the reasons following, among others:

First. Because, by the ratification of the treaty of peace hereinbefore referred to, the territory of the island of Porto Rico became a part of the territory of the United States, and the inhabitants thereof not in the military or naval service of the United States, nor in its militia in actual service in a time of war, and in the absence of any insurrection or rebellion or hostilities of any sort in said island, became and were entitled to enjoy the personal rights, privileges, and immunities guaranteed by the Constitution of the United States to all persons resident within the territory thereof.

Second. There being a state of peace in the island of Porto Rico at the time of the establishment of said provisional court and the prosecution of your petitioner therein, and the ordinary judicial tribunals of the island being open and exercising their respective jurisdictions, it was not competent or lawful to create such a tribunal as said provisional court, and said proceedings against your petitioner therein were null and void.

Third. Because no presentment or indictment by a grand jury was returned against your petitioner, whereby he was charged with an offense cognizable at law.

Fourth. Because he was denied the right of a trial by jury.

Fifth. Because the alleged offense charged against your petitioner did not constitute a misdemeanor or a crime, although he is being subjected to an infamous punishment for the alleged commission thereof.

Sixth. The elections held as aforesaid, and for the voting at which your petitioner was arrested and is now imprisoned, were without legal authority and of no validity, because such elections were not held in pursuance of the established law of the land, and the military authorities in command of said island of Puerto Rico had no such political and civil powers as authorized them or any of them to ordain and establish a form of civil government for the municipalities of said island, or to hold elections therein, or to declare the qualifications of voters thereat, or to extend to or withhold from the inhabitants the right of suffrage, and to provide punishments for the improper or illegal exercise thereof—all such matters being foreign to the executive and military branches of the Government of the United States and subject to the sole cognizance and control of the Congress.

Your petitioner further avers that more than thirty other persons, residents of said island of Porto Rico, were apprehended and tried by said provisional court upon the same or similar charges to those preferred against him, and such persons were likewise found guilty and sentenced to undergo like punishment, but the sentences of the court in such

other cases have been stayed pending the determination of your petitioner's application herein.

Wherefore your petitioner prays that a writ of *habeas corpus* may be issued out of and under the seal of this honorable court, directed to the said Samuel C. Bothwell, marshal of the said United States provisional court, at Humacoa, Porto Rico, commanding him to have the body of your petitioner, together with a return of the date and cause of his detention, before this honorable court on a day to be designated therein, and that a writ of *certiorari* issue, directed to said United States provisional court, commanding it and the judges thereof to certify and send to this court on a certain day to be therein designated a full and complete transcript of the process, record, and proceedings by and before them touching the matter of your petitioner's said arrest, detention, and imprisonment, and that your petitioner may have such full and adequate relief in the premises as to this court may seem appropriate, and that he may be discharged from said custody and imprisonment, your petitioner will ever pray, etc.

RAMON BAEZ,
By TULIO LARRINAGA.

DISTRICT OF COLUMBIA, *ss:*

Tulio Larrinaga, being duly sworn, deposes and says:

That he is an inhabitant of Porto Rico and knows the petitioner, Ramon Baez;

He has read the foregoing petition by him subscribed and knows the contents thereof, and—

That the matters and things therein stated are true of his own knowledge except as to matters therein stated on information or belief, and as to those matters he believes them to be true.

Further, this petition is signed and verified by him for and on behalf of the said Ramon Baez for the reason that

the petitioner is confined in the island of Porto Rico, and to delay this application by sending the same for the signature and affidavit of the petitioner himself would greatly retard, if not entirely defeat, the relief thereby sought to be obtained.

TULIO LARRINAGA.

Subscribed and sworn to before me this 24th day of March, A. D. 1900.

WM. CAREY JOHNSON,
[SEAL.] *Notary Public, District of Columbia.*

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
Of Counsel for Petitioner.

WASHINGTON, D. C., *March* 24, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1900.

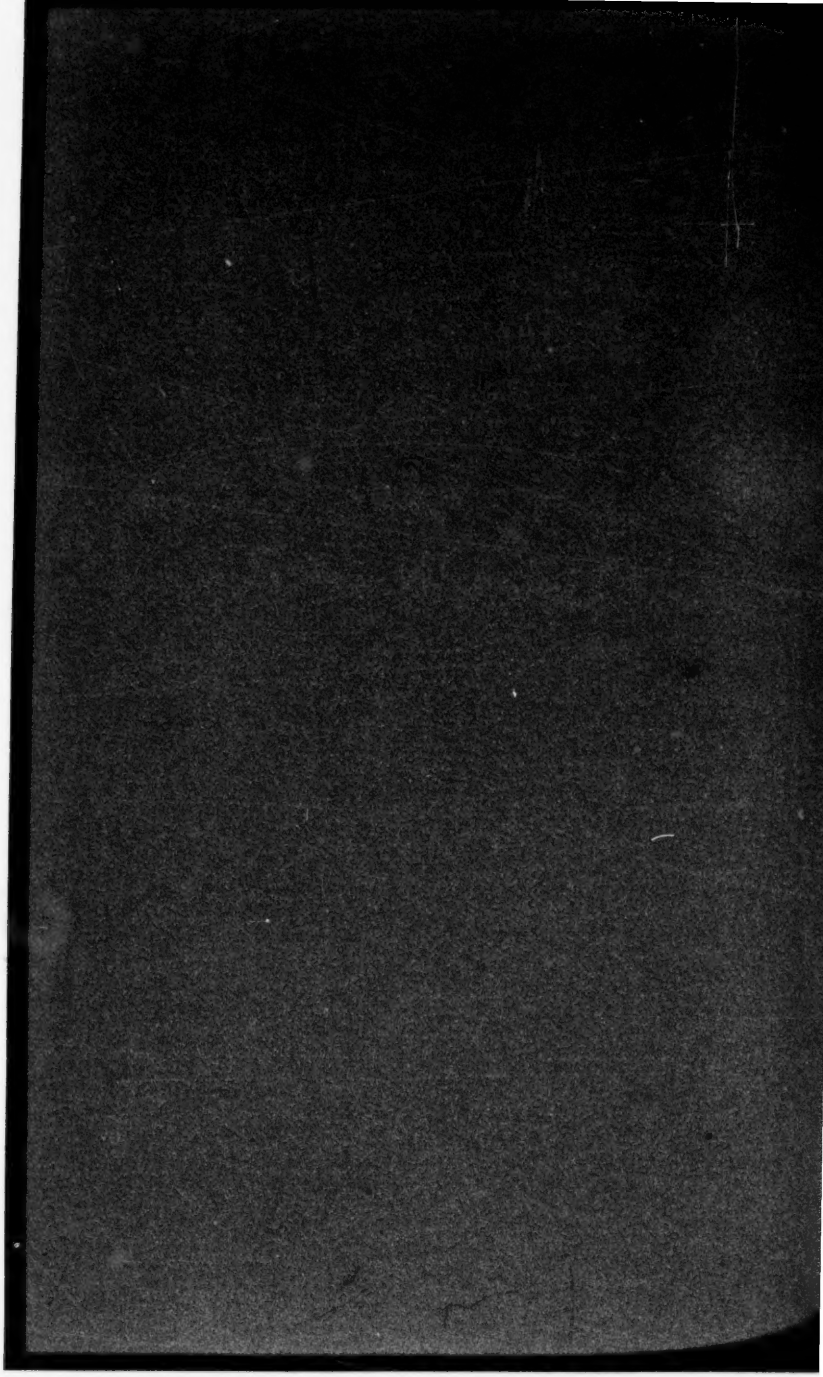
Original, No. .....

EX PARTE: IN THE MATTER OF RAMON BAEZ, Petitioner.

Motion for Leave to File and Petition for Writs of Habeas Corpus and Certiorari, to be Issued to the United States Provisional Court for the Department of Porto Rico and Samuel C. Reid-well, the Marshal Thereof.

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
For the Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 2-25-1900



IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

Original No. —.

EX PARTE: IN THE MATTER OF THE APPLICATION OF RAMON BAEZ, PETITIONER.

Application for Leave to File Petition for Writs of Habeas Corpus and Certiorari.

Now comes the above-named Ramon Baez, by his attorneys, and moves this honorable court for leave to file the accompanying petition for writ of *habeas corpus* and of *certiorari*, and to have the same entered upon the original docket of this court for the current term.

The grounds upon which such motion and application are based are set forth at length in the petition itself.

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
Attorneys for Petitioner.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

Original, No. .....

EX PARTE: IN THE MATTER OF RAMON BAEZ,
PETITIONER.

Petition for Writ of Habeas Corpus and of Certiorari.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Ramon Baez, by Tulio Larrinaga, for him and in his behalf, respectfully shows that he is a native-born inhabitant of the island of Puerto Rico, formerly a dependency of the Kingdom of Spain, but at the time of the occurrences hereinafter narrated belonging to and forming a part of the territory of the United States of America.

Your petitioner was also formerly a subject of His Imperial Majesty the King of Spain, but since long prior to the occurrences herein complained of and ever since, to and including the present time, he has neither owed nor acknowledged allegiance to any other nation or sovereignty than that of the United States of America.

Your petitioner represents unto this honorable court that he is wrongfully, improperly, unjustly, and illegally imprisoned and restrained of his liberty at Humacoa, in and on said island of Puerto Rico, by one Samuel C. Bothwell, called and styled as and being the marshal of the United States provisional court for the department of Puerto Rico.

By act of Congress approved April 25, 1898, it was declared that a state of war had existed and then existed between the United States of America and the Kingdom of Spain, and thereafter, in the course of the prosecution of such war, the military forces of the United States invaded and conquered the island of Puerto Rico and have ever since remained in possession and control thereof.

December 10, 1898, a treaty of peace was signed at Paris, France, between the duly accredited representatives of the United States of America and Her Majesty the Queen Regent of Spain; and the same having been duly reported to the Senate of the United States, ratification thereof was advised by the Senate on February 6, 1899, and, having been ratified by the President of the United States on said date and subsequently by Her Majesty the Queen Regent of Spain, ratifications thereof were exchanged at Washington on the 11th day of April, 1899, and the treaty was proclaimed by the President of the United States on the same day.

By said treaty it was provided, among other things, as follows:

ART. II. "Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, * * *"

ART. XI. "All Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such courts,

and to pursue the same course as citizens of the country to which the courts belong."

Prior to the ratification of said treaty of peace and on or about the 12th day of August, 1898, a protocol or agreement between the United States and the Kingdom of Spain was signed at the city of Washington by the representatives of the two nations, under and by virtue of the terms of which a suspension of hostilities between said nations was declared by the President of the United States.

By article IV of the said protocol it was agreed that Spain should evacuate Porto Rico and that commissioners should be appointed by the signatory powers for the purpose of arranging and carrying out the details of such evacuation.

Thereafter an evacuation commission was appointed by the President of the United States, and a similar commission was appointed by the government of Spain, and the commissioners subsequently assembled in the city of San Juan, Porto Rico, and duly arranged the terms of such evacuation, which were accepted by the respective governments, and the evacuation and retirement of the Spanish forces from the island of Puerto Rico occurred on the 18th day of October, 1898.

Thereupon, and on said date, Major General John R. Brooke, commanding the forces of the United States, in compliance with the orders of the President, assumed the government of the said island of Porto Rico, and by General Order No. 1, of said date, established the military "Department of Puerto Rico."

Said order, among other things, contained the following:

"The provincial and municipal laws, in so far as they affect the settlement of private rights of persons and property and provide for the punishment of crime, will be enforced unless they are incompatible with the changed conditions of Porto Rico, in which event they may be suspended by the department commander."

Your petitioner further shows that after said 12th day of August, 1898, hostilities ceased to exist in the island of Porto Rico between the forces of the United States and of Spain, and that since the 11th day of April, 1899, war has ceased to exist between the nations, and also since the last-named date, if not prior thereto, there has been and is now a condition of peace existing throughout said island of Porto Rico, and there has been neither a state of war with any foreign power in the said island, nor has there been any internal or domestic rebellions, revolutions, or dissensions, nor any failure to recognize the authority and sovereignty of the United States.

Since the occupation of Porto Rico by the United States authorities the civil courts of that island have been in session exercising the same jurisdiction and in substantially the same form as during the Spanish occupation of the island, and such courts were exercising their ordinary civil and criminal jurisdiction during all of the times hereinafter mentioned.

On the 27th day of June, 1899, by General Order No. 88, of Brigadier General George W. Davis, United States Army, then commanding the department of Porto Rico, and the supreme military authority in said island, there was established a "United States Provisional Court for the Department of Porto Rico."

Said General Order 88, among other things, provides as follows:

"SEC. II. The judicial power of the provisional court hereby established shall extend to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution, and to all common-law offenses within the restrictions hereinafter specified."

"SEC. IV. The decisions of said court shall follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules and records shall conform as nearly as practicable to those observed and kept in said Federal courts. * * *

"SEC. V. The provisional court shall consist of three judges, one of whom shall be known as the law judge, and the other two as associate judges, one United States district attorney, one marshal, one clerk, three deputy clerks, one stenographer and reporter, one interpreter, one bailiff and janitor, and one messenger. The law judge shall preside and shall determine and decide all technical questions of law. A majority vote of the bench shall determine all questions of fact. The jury system may be introduced or dispensed with in any particular case in the discretion of the court.

"SEC. VI. The judges of the provisional court shall be clothed with the powers vested in the judges of the circuit or district courts of the United States.

"SEC. VII. The district attorney shall be authorized to present to the court information against all parties for violations of United States statutes and regulations. He shall also in like manner present informations for violations of orders issued by the department commander relating to civil matters, which may be referred to him from these headquarters. * * *

"SEC. VIII. In order to define more clearly certain branches of the criminal jurisdiction of the provisional court, it is hereby provided that it shall include and be exclusive in the following classes of cases:

"1st. All offenses punishable under the statutory laws of the United States, such as those indicated in paragraph I of this order;

"2nd. Offenses committed by or against persons, foreigners or Americans, not residents of this department, but who may be traveling or temporarily sojourning therein, or against the property of non-residents.

"3rd. Offenses against the person or property of persons belonging to the army or navy, or those committed by persons belonging to the army or navy, not properly triable by military or naval courts; but not including minor police offenses.

"4th. Offenses committed by or against foreigners or by or against citizens of another State, district or Territory of the United States, residing in this department."

"SEC. XI. If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such

judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree. But if at the end of said ninety days such process has not been issued by the Supreme Court execution shall forthwith issue."

"SEC. XVI. The court shall adopt an appropriate seal which shall be procured by the treasurer of the island. The clerk of the court shall have the custody of the seal for use in attesting legal documents in the usual manner.

"SEC. XVII. In accordance with the provisions of paragraph V of this order the following appointments are announced to take effect July 1st, 1899:

"To be law judge: Noah Brooks Kent Pettingill.

"To be provisional United States attorney: J. Marbury Keedy.

"The following officers are hereby detailed on the special duty set opposite their respective names:

"Major Eugene D. Dimmick, 5th U. S. cavalry.	Associate judges of the U. S. provisional court.
"Major Earl D. Thomas, 5th U. S. cavalry.	
"1st Lieutenant Robert Alexander, 11th U. S. infantry.	Clerk of the U. S. provisional court.

"Private Samuel C. Bothwell, troop D, 5th U. S. cavalry, is detailed on special duty as marshal of the U. S. provisional court."

By General Order 216 of said department, dated December 18, 1899, section XI of General Order 88, hereinbefore set forth, was amended so as to read as follows:

"If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make ap-

plication to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree.

"For good cause, this court may extend the time of filing such application and record in the office of the clerk of the supreme or appellate court aforesaid.

"The stay of execution granted by this court shall be in force until the final disposition of the case by the supreme or appellate court aforesaid, provided that the party availing himself of the provisions of this section shall not be guilty of negligence in prosecuting his application before the said supreme or appellate court."

On the 21st day of September, 1899, by General Order 145 of said department, issued by Brigadier General George W. Davis, United States Army, as aforesaid, provision was made for the holding of municipal elections in said island of Porto Rico, and certain rules and regulations governing the right of the inhabitants to vote at such elections and the manner of exercising such suffrage were therein provided for, among others the following:

"SEC. V. An elector to vote at such elections shall possess the following qualifications:

"*a.* He must be a *bona fide* male resident of the municipality.

"*b.* He must be over twenty-one years of age.

"*c.* He must be a tax-payer of record at the date of his registration, or he must be able to read and write.

"*d.* He must have resided upon the island of Puerto Rico for two years next preceding the date of his registration, and for the last six months of said two years within the municipality where the election is held."

Thereafter, by General Orders 160 of said department, issued October 12, 1899, General Orders 145 were amended so as to read in part as follows:

"SEC. VIII. He must be a tax-payer of record in the municipality in which he votes at the date of this order, or he must be able to read and write. Persons who pay insular or municipal taxes of any kind, in their own right or name, or in the name of their lawful wife or minor child, or the members of a firm, corporation, or copartnership, paying taxes, and the heirs of an estate that pay taxes, are deemed tax-payers under the meaning of this clause. But administrators, guardians, trustees, agents, or other persons who pay taxes for other than themselves or their lawful family are not tax-payers within its meaning through such payment."

"SEC. XVI. Any person who fraudulently votes, or attempts or offers to fraudulently vote, or attempts to influence or control others to fraudulently vote, at any public election, shall, upon conviction thereof, be subject to a fine not exceeding one hundred dollars, or to imprisonment at hard labor not exceeding three months, or to both such fine and imprisonment, in the discretion of the court."

Thereafter, by special orders of the military authorities commanding the said department, an election was ordered to be held on the 31st day of October, 1899, in the city of Guayama, Porto Rico, for the election of the ordinary municipal officers of said city to fill the offices in the plan of civil government established by the military authority of the United States.

Your petitioner represents that, being duly qualified in accordance with law and the general orders aforesaid, he voted at said election for the candidates of the party to which he belonged, and thereafter, on or about the 10th day of November, 1899, he was arrested and taken into custody by one Samuel C. Bothwell, marshal of said United States Provisional Court of the Department of Porto Rico, and brought before said provisional court, and was there charged by the district attorney thereof, in an information or complaint which was read to him, with having illegally voted at the said election in the city of Guayama heretofore mentioned.

Your petitioner pleaded "Not guilty" to said charge, and thereafter said United States provisional court proceeded to try him for said alleged offense, although your petitioner objected to the jurisdiction of said court and denied that he had committed any crime or offense cognizable by said court, and further objected on the ground that no presentment or information had been returned by a grand jury, and further that he was deprived of a trial by jury in said cause, a jury trial having been demanded by him and refused by said court.

After hearing the evidence in said proceeding, said provisional court found your petitioner "Guilty," and sentenced him to imprisonment at hard labor in the jail of Humacao, Porto Rico, for a period of thirty days.

Thereupon, in accordance with the provisions of section XI of General Orders 88, as amended and heretofore referred to, your petitioner applied for a stay of execution of ninety days, to permit him to make application to this honorable court for a writ of *certiorari* or other suitable process, to review the action, and to set aside the judgment of said provisional court.

Such application was granted; and the time allowed under said section having expired, your petitioner has been taken into custody by the said Samuel C. Bothwell, marshal as aforesaid, and is by him now unlawfully restrained of his liberty and compelled to perform infamous tasks.

The proceedings of said United States provisional court are set forth at large in the duly certified copy of the transcript of the record in said court submitted herewith.

Your petitioner further alleges that he is advised that said United States Provisional Court for the Department of Porto Rico had no jurisdiction or lawful authority under the Con-

stitution and laws of the United States to cause the arrest of your petitioner or to proceed against him in manner and form aforesaid, and that said pretended process, arrest, order, trial, and judgment, and warrant whereby your petitioner was committed to the custody of the said Samuel C. Bothwell, and whereby, in custody of said Samuel C. Bothwell, he is imprisoned and restrained of his liberty, as aforesaid, were and are, each and all of them, in violation of the Constitution of the United States and the just rights of your petitioner, and are without authority of law and void.

Your petitioner further alleges that said United States provisional court had no jurisdiction to try him for the alleged offense with which he is charged for the reasons following, among others:

First. Because, by the ratification of the treaty of peace hereinbefore referred to, the territory of the island of Porto Rico became a part of the territory of the United States, and the inhabitants thereof not in the military or naval service of the United States, nor in its militia in actual service in a time of war, and in the absence of any insurrection or rebellion or hostilities of any sort in said island, became and were entitled to enjoy the personal rights, privileges, and immunities guaranteed by the Constitution of the United States to all persons resident within the territory thereof.

Second. There being a state of peace in the island of Porto Rico at the time of the establishment of said provisional court and the prosecution of your petitioner therein, and the ordinary judicial tribunals of the island being open and exercising their respective jurisdictions, it was not competent or lawful to create such a tribunal as said provisional court, and said proceedings against your petitioner therein were null and void.

Third. Because no presentment or indictment by a grand jury was returned against your petitioner, whereby he was charged with an offense cognizable at law.

Fourth. Because he was denied the right of a trial by jury.

Fifth. Because the alleged offense charged against your petitioner did not constitute a misdemeanor or a crime, although he is being subjected to an infamous punishment for the alleged commission thereof.

Sixth. The elections held as aforesaid, and for the voting at which your petitioner was arrested and is now imprisoned, were without legal authority and of no validity, because such elections were not held in pursuance of the established law of the land, and the military authorities in command of said island of Puerto Rico had no such political and civil powers as authorized them or any of them to ordain and establish a form of civil government for the municipalities of said island, or to hold elections therein, or to declare the qualifications of voters thereat, or to extend to or withhold from the inhabitants the right of suffrage, and to provide punishments for the improper or illegal exercise thereof—all such matters being foreign to the executive and military branches of the Government of the United States and subject to the sole cognizance and control of the Congress.

Your petitioner further avers that more than thirty other persons, residents of said island of Porto Rico, were apprehended and tried by said provisional court upon the same or similar charges to those preferred against him, and such persons were likewise found guilty and sentenced to undergo like punishment, but the sentences of the court in such

other cases have been stayed pending the determination of your petitioner's application herein.

Wherefore your petitioner prays that a writ of *habeas corpus* may be issued out of and under the seal of this honorable court, directed to the said Samuel C. Bothwell, marshal of the said United States provisional court, at Humacoa, Porto Rico, commanding him to have the body of your petitioner, together with a return of the date and cause of his detention, before this honorable court on a day to be designated therein, and that a writ of *certiorari* issue, directed to said United States provisional court, commanding it and the judges thereof to certify and send to this court on a certain day to be therein designated a full and complete transcript of the process, record, and proceedings by and before them touching the matter of your petitioner's said arrest, detention, and imprisonment, and that your petitioner may have such full and adequate relief in the premises as to this court may seem appropriate, and that he may be discharged from said custody and imprisonment, your petitioner will ever pray, etc.

RAMON BAEZ,
By TULIO LARRINAGA.

DISTRICT OF COLUMBIA, *ss:*

Tulio Larrinaga, being duly sworn, deposes and says:

That he is an inhabitant of Porto Rico and knows the petitioner, Ramon Baez;

He has read the foregoing petition by him subscribed and knows the contents thereof, and—

That the matters and things therein stated are true of his own knowledge except as to matters therein stated on information or belief, and as to those matters he believes them to be true.

Further, this petition is signed and verified by him for and on behalf of the said Ramon Baez for the reason that

the petitioner is confined in the island of Porto Rico, and to delay this application by sending the same for the signature and affidavit of the petitioner himself would greatly retard, if not entirely defeat, the relief thereby sought to be obtained.

TULIO LARRINAGA.

Subscribed and sworn to before me this 24th day of March, A. D. 1900.

WM. CAREY JOHNSON,
[SEAL.] *Notary Public, District of Columbia.*

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
Of Counsel for Petitioner.

WASHINGTON, D. C., *March* 24, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1909.

Original, No. ——

EX PARTE: IN THE MATTER OF RAMON BAEZ, Petitioner.

Brief in Support of Application for Leave to File Petition for Writ of Habeas Corpus and Certiorari.

FREDERIC D. McKENNEY,
FRANCIS H. DEWITT,
For Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 2-26-1909

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

Original No......

EX PARTE: IN THE MATTER OF THE APPLICATION OF RAMON BAEZ, PETITIONER, FOR WRITS OF *HABEAS CORPUS* AND *CERTIORARI.*

Statement and Memorandum Brief in Support of Motion for Leave to File Application.

Petitioner, Ramon Baez, is one of thirty-two inhabitants of Puerto Rico who were prosecuted in the United States Provisional Court for the Department of Puerto Rico for alleged fraudulent voting at a municipal election held at the city of Guayama, Puerto Rico, October 31, 1899, under the authority and orders of the military governor commanding the United States forces in said island. The informations upon which they were tried and convicted charged them with having paid taxes in order to secure the right to vote, when, in fact, they were not "tax-payers."

Petitioner and the other thirty-one defendants were tried and convicted by the tribunal designated as above and

created by the military governor at Puerto Rico subsequent to the ratification of the treaty of peace between the United States and Spain. Said court was and is composed of one law judge, an American lawyer, and two military officers of the Fifth United States cavalry, stationed in said island. These defendants were each found guilty by the said tribunal and sentenced to a fine of ten dollars or, in default thereof, to one month's imprisonment at hard labor. The fines imposed have not been paid in any of the cases.

No presentment or indictment of a grand jury was returned against this petitioner nor any of said defendants, and the said provisional court refused them a trial by jury, though the same was duly demanded. The provisional court granted a stay of execution of sentence against petitioner to permit him to make application to this court for a writ of certiorari or other suitable process to review its action and set aside its proceedings and sentence. By agreement between the district attorney of said United States provisional court and the attorney for defendants, it was agreed that execution of sentences in the other cases should be stayed pending disposition of Baez' application.

The stay allowed petitioner elapsed on the sixteenth of this month (March), and he has been taken into actual custody, is now restrained of his liberty, and held at hard labor at Humacao by Samuel C. Bothwell, marshal of said United States provisional court, in compliance with the sentence of said tribunal.

A stay of execution of sentence has been granted by said provisional court to all of the other defendants before referred to pending a determination by this court of this case. It is apparent that the determination of the principle involved in this case will affect the right to liberty of thirty-one other persons convicted and sentenced, as was the petitioner herein.

Points.

I.

The United States provisional court was without jurisdiction to try and convict petitioner. He was held to answer for an infamous crime and was convicted thereof and is now restrained of his liberty and confined at hard labor without a presentment or indictment of a grand jury previously returned against him;—this not being a case arising in the land or naval forces or in the militia in actual service either in time of war or public danger. The ordinary civil courts of the Territory wherein he was a resident were open and exercising their ordinary jurisdictions, and therein he should have been tried, if at all.

II.

He was and is deprived of his liberty without due process of law.

III.

He did not enjoy the right to a * * * trial by an impartial jury of the district wherein the crime was committed.

IV.

He was tried and convicted of an offense unknown to the law of the land wherein he was resident.

Argument.

This court has jurisdiction to grant the writs of habeas corpus and certiorari.

"The supreme court and the circuit and district courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided

or by statute, which may be necessary to the exercise of heir respective jurisdictions, and agreeable to the principles and usages of law" (sec. 716, Rev. Stat. U. S.).

"The Supreme Court and the circuit and district courts shall have power to issue writs of *habeas corpus*" (sec. 751, Rev. Stats. U. S.).

"The writ of *habeas corpus* shall in no case extend to a prisoner in jail, *unless where he is in custody under or by color of the authority of the United States*" (sec. 753, Rev. Stats. U. S.).

The jurisdiction and authority of courts-martial or military commissions may be attacked and made the basis for *habeas corpus* before the United States Supreme Court.

In re Grimley, 137 U. S., 147.

Ex parte Milligan, 4 Wall., 2.

In case of *In re* Bonner, 151 U. S., 242, the writ of *habeas corpus* was granted by this court because a territorial court had imposed an illegal sentence upon petitioner therein. This was a direct application to this court, addressed to its original jurisdiction, and no appeal had been taken from the territorial court, though such an appeal was provided for by law. The court said:

"To deny the writ of *habeas corpus* in such a case is a virtual suspension of it; and it should constantly be borne in mind that the writ was intended as a protection of the citizen from encroachment on his liberty from any source—equally as well from the unauthorized acts of courts and judges as the unauthorized acts of individuals."

The fifth article of the Amendments requiring presentment or indictment by the grand jury against persons held to answer infamous crimes has been held to be jurisdictional.

Ex parte Bain, 121 U. S., 1.

"The Supreme Court may issue writs of certiorari in all proper cases, and will do so when the circumstances im-

peratively demand that form of interposition, *to correct excesses of jurisdiction and in the furtherance of justice.*"
In re Chetwood, 165 U. S., 443.

"It may be used as at common law."
Ibid., p. 462.

"While this branch of the court's jurisdiction would be exercised sparingly and with great caution, in cases of gravity the writ would issue."
In re Law Ow Bew, 141 U. S., 583.

I.

The United States Provisional Court was without authority or jurisdiction to try and convict petitioner, and its proceedings were null and void.

Ex parte Milligan, 4 Wall., 2, would seem to be conclusive in support of this proposition.

Petitioner is entitled to the benefit of the following constitutional provisions:

"ART. 5. No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public debt without just compensation.

"ART. 6. In all criminal transactions, the accused shall enjoy the right to a speedy and public trial by an impartial jury in the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and be informed of the nature and cause of the accusation; to be confronted with the witnesses

against him; to have compulsory processes for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

These provisions must govern in all cases and places where personal rights are determined by the authority of the Federal Government, whether in the so-called Constitutional (Federal) courts or in some other tribunal constituted and acting under its exclusive authority. These constitutional limitations apply throughout the territorial limits of the United States, whether long established or newly extended. The provisional court and the island of Puerto Rico are under the exclusive control of the Federal Government.

By the ratification of the treaty of peace with Spain, Puerto Rico became a part of the United States territory, and the Federal Government of the United States holds and governs it subject to those limitations of the Constitution which exist in favor of all other territory of the Union.

"Every nation acquiring territory by treaty or otherwise, must hold it subject to the constitution and laws of its own government."

Pollard's Lessee *vs.* Hagan, 3 How., 225.

II.

Petitioner is entitled to the benefit of the civil-right guarantees of the Constitution and the amendments. In Reynolds *vs.* United States, 98 U. S., 145, it was assumed that the sixth amendment of the Constitution secured to the people of the Territories the right of trial by jury and criminal prosecution.

Callan *vs.* Wilson, 127 U. S., 540, 550.

Webster *vs.* Reid, 11 Howard, 437.

In the case of *Ex parte* Bollman, 4 Cranch, 75, this court discharged the petitioner from the custody of the military authorities which had arrested him in Orleans Territory

without civil warrant, on the ground that the arrest was "a very gross violation of the fourth amendment."

"It is beyond question that the provisions of the National Constitution relating to trials by jury for crimes and to criminal prosecutions apply to the Territories of the United States."

Thompson *vs.* Utah, 170 U. S., 343, 347.

The last clause of article XI of the treaty of peace, that "the civil rights and political status of the native inhabitants of the territory hereby ceded to the United States shall be determined by Congress," cannot impair or abrogate the operation of the constitutional provisions herein referred to.

"A treaty cannot change the Constitution or be held valid if it be in violation of that instrument."

The Cherokee Tobacco, 11 Wall., 616, 620.

Under the Florida treaty, the United States became possessed of the territory subject to the institutions and laws of its own government.

Pollard's Lessee *vs.* Hagan, 3 How., 212.

No different rule respecting personal rights guaranteed by the Constitution prevails in Puerto Rico from that which prevails in other territories of the United States outside of the States themselves.

"The United States, under the present Constitution, cannot acquire territory to be held as a colony, to be governed at its will and pleasure. * * * During the time it remains a Territory, Congress may legislate over it *within the scope of its constitutional powers in relation to citizens of the United States, and may establish a territorial government, * * * but with powers not exceeding those which Congress itself, by the Constitution, is authorized to exercise over citizens of the United States in respect to their rights of person or rights of property.*"

Dred Scott *vs.* Sandford, 19 How., 393.

In Loughborough *vs.* Blake, 5 Wheaton, 317, Chief Justice Marshall, referring to the Constitution, said, in interpreting the eighth section of the first article of the Amendments:

"It extends to all places over which the Government extends. * * * United States is the name given to our great Republic which is composed of States and Territories. The District of Columbia, or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania."

Article II of the Treaty of Peace between the United States and Spain is in part as follows:

"Spain cedes to the United States the Island of Porto Rico." * * *

By the ratification and promulgation of that treaty on April 11, 1899, the Island of Porto Rico became a part of the territory of the United States.

The power of the United States to acquire new territory does not depend upon any specific grant contained in the Constitution so to do, but flows from its sovereignty over commerce, war, and treaties.

3 Story's Com. Const., sec. 1281.

American Ins. Co. *vs.* Canter, 1 Pet., 511.

The power of the United States over conquered and ceded territory is sovereign, and exclusive of State control.

Territory acquired by conquest or treaty does not by force of the Constitution itself become entitled to self-government.

During the existence of the war or continuance of military operations in restoring peace it is governed by the military power, but when ceded by treaty, with peace in full flower, it is no longer subject to military rule.

With the transfer of the domain, the inhabitants cease to be inhabitants of the country that makes the cession.

People *vs.* Godfrey, 17 Johns., 225.

The government of the ceded territory existing prior to the cession remains until the proper legislative authority establishes another government in its stead, but with the cession—

"The military government which was established * * * under the laws of war, as recognized by the practice of all civilized nations, * * * ceased to derive its authority from this (that) source of power. * * * The termination of the war left an existing government, a government *de facto*, in full operation, and this will continue with the presumed consent of the people, until Congress shall provide for them a territorial government. The great law of necessity justifies this conclusion. * * *

"This government *de facto* will, of course, exercise no powers inconsistent with the provisions of the Constitution of the United States, which is the supreme law of the land." * * *

Mr. Buchanan, Sec'y of State. to Mr. Voorhees, October 7, 1848.

In Ins. Co. *vs.* Canter (*supra*) it was said, in respect of the treaty by which Florida was ceded to the United States:

"This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights and immunities of the citizens of the United States. *It is unnecessary to inquire whether this is not their condition, independently of stipulations.* They do not, however, participate in political power. They do not share in the government until Florida shall become a State. In the meantime Florida *continues to be territory of the United States guarded by virtue of that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property belonging to the United States.*"

Repeated and reaffirmed in United States *vs.* Gratiot, 14 Pet., 526.

In Cross *vs.* Harrison, 16 How., 164, it was declared that "*the ratification of the treaty made California a part of the United States, and that as soon as it became so, the Territory*

became subject to the acts which were in force to regulate foreign commerce with the United States."

Von Holst (Const. History of U. S., vol. 3, p. 446), considering the debate between Webster and Calhoun on the compromise of 1850, says:

"Thus, though the territories are possessions of the United States, we shall be obliged to concur unconditionally with the Supreme Court which, in contradiction to Webster in a later decision, (Dred Scott *vs.* Sandford, *supra*) repeatedly designates them also as a 'part' of the United States. And equally incontestable is its further declaration, that the powers of the Federal Government with regard to persons and property of the citizens of the territories, cannot be other or greater than those granted it over the citizens of the States."

That Porto Rico is in a state of peace does not admit of question, and "where peace exists the laws of peace must prevail."

The Constitution of the United States is the supreme law of the land—of that "land" which comprehends Territories as well as States—territories outlying and newly acquired, as well as those of older acquisition and more near approach.

The sovereignty of the United States is coextensive with its territory. As broad and long as that territory may be or may become, the Constitution with capacious folds ever envelopes it, and wheresoe'er the Constitution doth prevail the jurisdiction of this court extends to prevent oppression and maintain the guarantees of personal rights, liberties, and immunities against the exercise of despotic power.

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
For the Petitioner.

MARCH 24, 1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

Original, No. .

EX PARTE: IN THE MATTER OF RAMON BAEZ, PETITIONER.

BRIEF FOR PETITIONER IN REPLY.

The brief submitted by the Solicitor General in this case has the merit of relieving the question presented by the petitioner from any possible trace of confusion or ambiguity, for when it is read in connection with the brief heretofore presented by the petitioner, they will be found to be in absolute agreement and accord upon every fact necessary to be considered by this court in deciding upon the propriety of allowing the question at issue to be fully argued before it is decided. The facts thus clearly presented and admitted are:

First. That this Government has had absolute and exclusive sovereignty over and ownership of the island of Porto Rico since April 11, 1899, the day of the promulgation of the treaty of peace between this Government and the government of Spain.

Second. That since that date a condition of absolute and undisturbed peace has existed and still exists in the island of Porto Rico.

Third. That since the date of that treaty the local tribunals for the administration of civil and criminal justice existing before such cession have been discharging their proper functions, and from that date until the present there has been no action by the legislative department of this Government establishing any other or different tribunals for the administration of justice, either civil or criminal.

The brief submitted by the Solicitor General asserts that a military officer, with the assent of the Secretary of War and the President, may, long after such cession and the declaration of peace, promulgate a code of civil and criminal law governing all persons then upon the island of Porto Rico, and may establish a tribunal composed of persons designated by him for that purpose, which tribunal so established may, subject to his approval, conduct trials in any manner he prescribes and inflict any punishment he judges expedient, and from the judgment of such tribunal, established in a time of profound peace, there can be no appeal except such as he allows.

This contention is distinctly traversed by the petitioner, who alleges that, being within the exclusive authority, control, and sovereignty of the Government of the United States, upon a territory exclusively belonging to it, in a time of profound peace, and in a country where the ordinary tribunals for the administration of justice are discharging their functions, he is not subject to the arbitrary will of any officer of the army, or of the Secretary of War, or of the President of the United States.

It will be observed that the issue thus distinctly and clearly presented does not properly involve any other question than the one it presents.

It may be true or it may not be true that the inhabitants of Porto Rico are now aliens or citizens of the United States or occupy an anomalous position as having no country; but in whatever category of citizenship such inhabitants may be is a question not involved in the present controversy.

It may be true or it may not be true that the inhabitants of Porto Rico are entitled to "the immunities and privileges" of the other inhabitants of the territory of the United States so far as concerns the laws regulating the imposition of customs duties or of internal-revenue taxes; but whether they are or are not so entitled is a question not involved in the present controversy.

It may be true or it may not be that Congress possesses with respect to the island of Porto Rico precisely the same unlimited, uncontrolled, and absolute power which the Czar of Russia possesses with respect to the last khanate conquered by him in Asia, so that Congress, like the Czar, may establish in Porto Rico a monarchy, with the systems of slavery and polygamy and a State church, and in every respect deal with the inhabitants of that island free from any limitation whatever upon its power; but that question is also a question not involved in the present controversy.

On April 11, 1899, the island of Porto Rico became an integral part of the territory of the United States, quite as much so as any other foot of its territory. Nearly three months thereafter, on June 27, 1899, without a pretense of any disturbance of the absolute peace which had continuously existed and still exists in the island, Brigadier General Davis assumed to establish a military tribunal; to give to it jurisdiction over all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution "and to all common-law offenses

within the restrictions therein specified," and to declare that the members of such tribunal, arbitrarily appointed by him, "shall be clothed with the powers vested in the judges of the circuit or district courts of the United States." A copy of General Orders No. 88 of June 27, 1899, establishing such tribunal, is hereto appended as Appendix A.

It is only just to Brigadier General Davis to state that in the ninth paragraph of these orders he was gracious enough to allow "any party litigant aggrieved by the judgment or decree of his appointees a stay of ninety days 'for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree.'" And in the twelfth paragraph he declares that *he* "will exercise the power of pardon, commutation or mitigation of punishment in criminal cases."

It will be observed that the right of Brigadier General Davis to arrest, try, and punish any inhabitant of Porto Rico according to his own will or pleasure is practically unlimited as to time, for if he can establish such a tribunal three months after the island became a part of the territory of the United States and in a time of profound peace, he can, of course, do so as well three years from that date, provided Congress and the President continue to leave the government of the island in his hands.

It does not seem to us to require elaborate argument or the citation of many authorities to satisfy this court that the proposition thus clearly affirmed by the Solicitor General on the one side, and as clearly denied by the petitioner on the other, is a question of sufficient gravity and importance to justify this court in listening to an argument upon it.

Indeed, it is not thought by us to be possible that the inhabitants of Porto Rico, three months after peace has been

declared and the island has been in the peaceable possession of the United States, are still subject to the arbitrary judgment of military officers designated by a brigadier general and whose functions and duties are defined by him.

JURISDICTION.

The jurisdictional power of this court to issue writs of *habeas corpus* is not, as suggested by the learned Solicitor General, confined to cases which may be subject to review by the court on writ of error or appeal.

The decisions of courts-martial cannot be reviewed by this court on writ of error or appeal, yet the power of the court in an original proceeding to inquire into the legality of a detention under a court-martial sentence has never been seriously doubted.

Ex parte Reed, 100 U. S., 13.
Ex parte Mason, 105 U. S., 696.

In *Ex parte* Wilson (114 U. S., 417) it was said by Mr. Justice Gray (p. 420):

"It is well settled by a series of decisions that this court, having no jurisdiction of criminal cases by writ of error or appeal, cannot discharge on *habeas corpus* a person imprisoned under the sentence of a circuit or district court in a criminal case, unless the sentence exceeds the jurisdiction of that court, *or there is no authority to hold him under the sentence.*"

The true extent of the power and duty of the court in such cases is well defined in *Ex parte* Terry (128 U. S., 289, 301), as follows:

"There can be no dispute either as to the power or duty of this court in cases of this character. Its power to issue a writ of *habeas corpus* for the purpose of inquiring into the cause of the restraint of the liberty of the person in whose

behalf the writ is asked, is expressly conferred by statute, and *extends to the cases, among others, of prisoners in jail under or by color of the authority* of the *United States*, and of persons who are in custody in violation of the Constitution or laws of the United States." * * * "Its general duty in such cases is also prescribed by statute." * * * Upon complaint duly verified * * * "it is the duty of the court to 'forthwith award a writ of *habeas corpus*, unless it appears from the petition itself that the party is not entitled thereto'" (Rev. Stats. U. S., 751–755).

It clearly appears from the petition in the pending case that petitioner is confined under or by color of authority of the United States. It is contended by him that such confinement is in violation of the Constitution and laws of the United States.

Whatever may be the political status of the island of Porto Rico and of its inhabitants, it cannot reasonably be contended that it and they are not embraced within the territorial sovereignty of the United States. Of the courts of the United States, this court alone has general powers co-extensive with the national territory.

If this court has not power to grant writs of *habeas corpus* to inquire into the authority of the Provisional Court of the Department of Porto Rico, no other court of the United States possesses it.

For this reason the proceedings are addressed to the court as an original matter and not by way of appeal.

The learned Solicitor General asserts that "the so-called courts [in Porto Rico] are mere agencies of the military power. * * * No provision whatever has been made for extending the judicial power of the United States over Puerto Rico."

If in the latter sentence he refers alone to rightful legislative provision, we readily yield assent, but it is not true

that *no provision whatever* for extending that judicial power has been made.

General order 88 (Appendix) establishing the provisional court declares (sec. II) that its powers "shall extend to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution, and to all common-law offenses within the restrictions hereinafter specified."

Section III of said General Order recites Article III, section 2, par. 1, of the Federal Constitution, and section IV provides that the provisional court "shall follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules, and records shall conform as nearly as practicable to those observed and kept in said Federal court. Section XI provides for "writs of certiorari or other suitable process" from the Supreme Court of the United States to review its judgments or decrees.

That the provisional court, backed by the military power of the United States, is exercising the functions and powers thus conferred upon it will not be denied. With the Insular courts, established under Spanish rule, administering existing laws in the island and capable of protecting the inhabitants in their persons and property as they have for so many years protected them, it is folly to contend that the provisional court was a military necessity. Its establishment evidences a distinct attempt by the executive branch of the Government, acting through the military authorities, to extend the judicial power of the United States in the absence of legislative enactment. It was just such an attempt as this that was rebuked by this court in Jecker *vs.* Montgomery (13 How., 498, 515), where Mr. Chief Justice Taney, speaking for the court, said:

"Under the Constitution of the United States the judicial power of the General Government is vested in one Supreme Court, and in such inferior courts as Congress shall from time to time ordain and establish. Every court of the

United States, therefore, must derive its jurisdiction and judicial authority from the Constitution or the laws of the United States. *And neither the President nor any military officer* can establish a court in a conquered country, and authorize it to decide upon the rights of the United States, or of individuals in prize cases, nor to administer the laws of nations."

To the extent that circuit and district courts of the United States have jurisdiction to pass upon the rights of parties to prize cases or to administer the laws of nations, to such extent also has the provisional court of the department of Porto Rico like jurisdiction under the order of Brigadier General Davis, and in addition this court has jurisdiction (sec. VIII) over "all offenses punishable under the statutory laws of the United States, such as those indicated in paragraph I of this order."

Does not this indicate at least a *willingness* on the part of the military authorities, in the absence of legislation by Congress, to extend the statutory laws of the United States over this newly acquired territory?

II.

The provisional court was without warrant of law for its existence. Its sentences do not result from or in *due process* of law. Having no jurisdictional power over petitioner, its sentence condemning him to be restrained of his liberty is void. This results irrespective of the question as to character of the offense with which he is charged and particularly without regard to whether it be "infamous" or otherwise.

This court has never ruled that imprisonment at hard labor in jail was not equally infamous with like imprisonment in a "State jail" or penitentiary. Wherein imprison-

ment at hard labor in an insular or territorial jail would differ in infamy from like imprisonment in a "*State* jail" is not disclosed by the brief for the United States.

"For more than a century, imprisonment at hard labor in the State prison or penitentiary or *other similar institution* has been considered an infamous punishment in England and America."

Ex parte Wilson, 114 U. S., 417, 428.

Sir William Blackstone classes among the punishments "that consist principally in their ignominy," "hard labor, *in the house of correction* or otherwise."

Besides, the test of whether a crime is infamous consists in the character of the punishment that may or might be imposed upon the offender, and is not measured by that which is actually imposed.

"When the accused is in danger of being subjected to an infamous punishment if convicted, he has the right to insist that he shall not be put to trial except on the accusation of a grand jury."

Ex parte Wilson (*supra*).

It is admitted in the brief for the United States (p. 7) that there is a penitentiary at Ponce, and there is nothing in the general order prescribing the crime with which petitioner is charged and its punishment which indicates a preference for the incarceration of the accused in one of the jails rather than in the penitentiary.

The fact that in the sequel the jail proved to be the more convenient receptacle is of no consequence.

Though the constitutional guarantees relating to grand and petit juries do not apply to States (Maxwell *vs.* Dow 176 U. S., —), it is well settled that they do apply to Territories (Thompson *vs.* Utah, 170 U. S., 343) and all other

places over which the United States exercise exclusive jurisdiction (Callan *vs.* Wilson, 127 U. S., 540).

It is respectfully submitted that upon the showing made in the petition and upon the principles enunciated in *Ex parte* Terry (*supra*), the writs prayed for should issue forthwith.

FREDERIC D. McKENNEY,
FRANCIS H. DEXTER,
For the Petitioner.

WAYNE MACVEAGH,
Of Counsel.

APPENDIX.

A.

EXHIBIT D.

General Orders No. 88.

HEADQUARTERS DEPARTMENT OF PORTO RICO,
SAN JUAN, *June 27th*, 1899.

I. In view of existing and steadily increasing legal business requiring judicial determination, which does not fall within the jurisdiction of the local insular courts, such as smuggling goods in evasion of revenue laws, larceny of United States property, controversies between citizens of different States and of foreign States, violation of the United States postal laws, &c., &c., and pursuant to authority from the President of the United States, conveyed by endorsement of April 14th, 1899, from the acting Secretary of War, and after full conference with the supreme court and members of the bar of the island, a United States provisional court is hereby established for the department of Porto Rico.

II. The judicial power of the provisional court hereby established shall extend to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution, and to all common-law offenses within the restrictions hereinafter specified.

III. Art. III, sec. 2, paragraph 1, of the Constitution is as follows:

> "1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States;

between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects."

IV. The decisions of said court shall follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules and records shall conform as nearly as practicable to those observed and kept in said Federal courts. Its terms and places of sitting shall be fixed by the court at such times and places as may be most convenient for the parties litigant and to insure the expeditious transaction of business.

V. The provisional court shall consist of three judges, one of whom shall be known as the law judge, and the other two as associate judges; one United States district attorney, one marshal, one clerk, three deputy clerks, one stenographer and reporter, one interpreter, one bailiff and janitor, and one messenger. The law judge shall preside and shall determine and decide all technical questions of law. A majority vote of the bench shall determine all questions of fact. The jury system may be introduced or dispensed with in any particular case, in the discretion of the court.

VI. The judges of the provisional court shall be clothed with the powers vested in the judges of the circuit or district courts of the United States.

VII. The district attorney shall be authorized to present to the court informations against all parties for violations of United States statutes and regulations. He shall also in like manner present informations for violations of orders issued by the department commander, relating to civil matters, which may be referred to him from these headquarters. It shall also be his duty to represent the United States in all suits to which it is a party, and to perform such other duties as usually pertain to the district attorneys in the Federal courts of the United States.

VIII. In order to define more clearly certain branches of the criminal jurisdiction of the provisional court, it is hereby provided that it shall include and be exclusive in the following classes of cases:

1st. All offences punishable under the statutory laws of the United States, such as those indicated in paragraph I of this order.

2d. Offences committed by or against persons, foreigners, or Americans, not residents of this department, but who may be travelling or temporarily sojourning therein, or against the property of non-residents.

3d. Offences against the person or property of persons belonging to the army or navy or those committed by persons belonging to the army or navy, not properly triable by military or naval courts, but not including minor police offences.

4th. Offenses committed by or against foreigners or by or against citizens of another State, district, or Territory of the United States residing in this department.

IX. Cases arising under article XI of the treaty of peace between the United States and Spain will be determined as therein provided.

X. In civil actions when the amount in controversy is fifty *dollars* ($50) or over, and in which any of the classes of persons above enumerated in paragraph VIII are parties, or in which the parties litigant by stipulation invoke its jurisdiction, shall be brought in the provisional court: *Provided*, That in the determination of all suits to which Porto Ricans are parties, or of suits arising from contracts which have been or shall be made under the provisions of Spanish or Porto Rican laws, the court shall, as far as practicable, conform to the precedents and decisions of the U. S. courts in similar cases which have been tried and determined in territory formerly acquired by the United States from Spain or Mexico. In all other civil actions the case shall lie within the jurisdiction of the proper insular court as now provided by local law.

XI. If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree; but if at the end of said ninety days such process has not been issued by the Supreme Court execution shall forthwith issue.

XII. The department commander will exercise the power

of pardon, commutation, or mitigation of punishment in criminal cases.

XIII. All fees, fines, and costs paid to the clerk of the provisional court shall be turned over by him at the end of each calendar month to the treasurer of the island with a statement of the sources from which they are received.

XIV. Members of the bar of Porto Rico will be admitted to practice in the provisional court upon presentation of a certificate signed by the president of the supreme court of Porto Rico certifying to their professional standing.

XV. All lawyers practicing in the provisional court who are unfamiliar with the English language shall be permitted upon application to use their own interpreter when addressing the court.

XVI. The court shall adopt an appropriate seal which will be procured by the treasurer of the island. The clerk of the court shall have the custody of the seal for use in attesting legal documents in the usual manner.

XVII. In accordance with the provisions of paragraph V, of this order, the following appointments are announced to take effect July 1st, 1899:

To be Law Judge,

Noah Brooks Kent Pettingill.

To be Provisional United States Attorney,

J. Marbourg Keedy.

The following officers are hereby detailed on the special duty set opposite their respective names:

Major *Eugene D. Dimmick*, 5th U. S. Cavalry,
Major *Earl D. Thomas*, 5th U. S. Cavalry,
} Associate Judges of the U. S. Provisional Court.

1st Lieutenant *Robert Alexander*, 11th U. S. Infantry,
} Clerk of the U. S. Provisional Court.

Private *Samuel C. Bothwell*, Troop D, 5th U. S. Cavalry, is detailed on special duty as marshal of the United States provisional court.

The necessary deputies will be detailed in subsequent orders.

The officers named will proceed to San Juan and report to the adjutant general of the department.

The travel enjoined is necessary for the public service.

By command of Brigadier General Davis:

W. P. HALL,
Adjutant General.

In the Supreme Court of the United States.

October Term, 1899.

Original, No. ——.

EX PARTE: IN THE MATTER OF THE APPLICATION OF RAMON BARZ.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

Original, No. ——.

EX PARTE: IN THE MATTER OF THE APPLICATION OF RAMON BAEZ.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Ramon Baez, a native-born inhabitant of Puerto Rico, applies for leave to file a petition for writs of habeas corpus and certiorari to secure his release from further imprisonment under a judgment of the United States provisional court of Puerto Rico sentencing him "to be confined for a period of two months" (transcript, p. 10) for illegal voting at a municipal election held under a military order, the sentence afterwards being "remitted" to "imprisonment to thirty days at hard labor" (transcript, p. 11). The prayer is that the writ of habeas

corpus be directed to Samuel C. Bothwell, marshal of the provisional court, at Humacoa, Puerto Rico, commanding him to produce Baez before this court, and that the writ of certiorari issue to the provisional court of Puerto Rico commanding it to forward to this court a transcript of its proceedings in this case.

The following facts are material in the consideration of the application:

(1) Prior to the cession of Puerto Rico the island was under the rule of Spain. The civil law obtained. The jury system contemplated by our Constitution was unknown. In a modified form the jury system exists today in Spain, but had never been extended to Puerto Rico (Walton's Civil Law in Spain and Spanish America, ed. 1900, p. 498).

(2) Under the protocol of August 12, 1898, the United States occupied Puerto Rico, and on October 18, 1898, General Brooke, in compliance with the orders of the President, assumed command and, by General Orders, No. 1, established the Department of Puerto Rico. Since that time the government of the island has been conducted by the President, through the War Department, awaiting the action of Congress with respect to its future disposition and government.

(3) On April 11, 1899, ratifications were exchanged and the Treaty of Paris proclaimed. By this treaty Spain ceded to the United States the island of Puerto Rico. (Article II.) Spanish subjects, natives of the peninsula, residing in Puerto Rico, were given one year from the exchange of the ratifications—that is, until

April 11, 1900—to preserve their allegiance to Spain by making a declaration in a court of record. In default of the declaration within the year they are to be held "to have adopted the nationality of the territory in which they may reside." (Article IX.) The power of determining the "civil rights and political status of the native inhabitants" of Puerto Rico was reserved to Congress. (Article IX.)

(4) On June 27, 1899, by General Orders, No. 88, the United States provisional court for the Department of Puerto Rico was established. This was a military tribunal or commission, composed of a law judge, an American lawyer, and two associate judges, officers of the Fifth Cavalry, with an officer as clerk and a trooper as marshal.

(5) On September 21, 1899, by General Orders, No. 145, provisions for municipal elections held under military authority were made. After defining the qualifications of voters, the order provided:

> Any person who fraudulently votes, or attempts or offers to fraudulently vote, at any public election, shall, upon conviction thereof, be subjected to a fine not exceeding $100 or to imprisonment at hard labor not exceeding three months, or to both such fine and imprisonment, at the discretion of the court.

These elections were held under military authority for experimental and educational purposes.

(6) Under these orders a municipal election was held at Guayama on October 31, 1899. Baez admits in his petition (p. 10) that he "voted at said election." An information was filed charging him with having voted

illegally. He was tried before the provisional court without a jury, convicted and sentenced (petition, p. 13) "to imprisonment at hard labor in the jail of Humacao, Puerto Rico, for a period of thirty days." The thirty days began to run on March 16, 1900.

ARGUMENT.

I.

Is this military court and its trooper marshal within the territorial jurisdiction of this court? Both are in Puerto Rico. While that island has been ceded to the United States, Congress has as yet taken no action toward organizing the territory or applying to it the Constitution and the laws of the United States. The island has been acquired under the power conferred by the Constitution on the Government of the Union of making war and of making treaties (Marshall, C. J., in *Insurance Co.* v. *Canter*, 1 Peters, 511, 541). The ultimate disposition and government of territory thus acquired rests with Congress under the power granted it—

> To dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. (Article 4, section 3.)

Congress has not yet acted. The President is therefore still in control, acting through the War Department. The occupation is a military occupation. The so-called courts are the mere agencies of the military power. Everything is provisional and temporary. The Department of Justice of the United States is not in operation

in Puerto Rico. No provision whatever has been made for extending the judicial power of the United States over Puerto Rico. The island has not been erected into a separate judicial district, nor has it been included in any existing judicial district. The only officers there are military officers. They exercise military power and are subject to review and correction by military authority alone. The language of Mr. Chief Justice Taney in *Jecker* v. *Montgomery* (13 How., 498, 515) applies:

> The courts established or sanctioned in Mexico during the war by the commanders of the American forces were nothing more than agencies of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property while it was occupied by the American arms.

II.

The court has no jurisdiction of the case presented. Baez makes application for writs of habeas corpus and certiorari, certiorari to bring before the court the record of this military court and habeas corpus to discharge him from its sentence. Is it necessary to cite authorities upon the point that the jurisdiction of this court is conferred and limited by the Constitution and laws of the United States? "Every court of the United States," said Chief Justice Taney (13 How., 515), "must derive its jurisdiction and judicial authority from the Constitution or the laws of the United States." Parties can not by stipulation confer upon this court jurisdiction in a case where neither the Constitution nor the laws confer jurisdiction. Nor can a military officer do so by general

orders. The attempt of the general in command of Puerto Rico to confer upon this court jurisdiction to review by writ of certiorari the decisions of the military tribunal established by his order was, of course, futile.

An original application is made to this court for a writ of habeas corpus. My understanding of the rule is that the court will not issue the writ of habeas corpus except under its appellate jurisdiction—in other words, except when it has power to review the action of the court under whose judgment the prisoner is held (*Ex Parte Hung Hang*, 108 U. S., 552). Obviously the court can not issue a writ in this case under its appellate jurisdiction, for it has no authority to review the action of this military commission (*In the Matter of Metzger*, 5 How., 176, 190; *Ex Parte Vallandigham*, 1 Wall., 243, 253; *Ex Parte Mason*, 105 U. S., 696).

In *Ex Parte Milligan* (4 Wall., 2) the application was made in the first instance to the circuit court, and the case came before this court on a certificate of division.

III.

The petitioner relies on the fifth and sixth amendments, but the guarantees for a grand jury and a petit jury provided in these amendments only operate where the crime charged is an infamous one. Unless Baez satisfies the court that voting illegally at a municipal election held under a military order is an infamous crime, his prayer must be denied. Has he done so?

It is to be noted that Baez admits he voted. He therefore voluntarily brought himself within the military order

and of his own accord subjected himself to its penalties. The general in command said to the Puerto Ricans, You may participate in the government entrusted to me upon certain conditions, but if you violate these conditions I will punish you. Baez accepted the boon, he must bear the burden; he enjoyed the privilege, he must pay the price. It does not lie in his mouth to say there was no law for the election. If there was law enough to make it worth his while to vote, there was law enough to punish him for voting illegally.

Was the crime an infamous one? To vote illegally is not in itself an infamous crime. Did the punishment prescribed make it so? This punishment was "a fine not exceeding $100 or imprisonment at hard labor not exceeding three months, or both." This is the punishment ordinarily inflicted for a misdemeanor. It is not infamous punishment. Imprisonment at hard labor is only infamous when it means imprisonment in a State jail or penitentiary (*In re Mills*, 135 U. S., 263; *Ex parte Weston*, 114 U. S., 417). Imprisonment at hard labor under this order simply means imprisonment in what we call a county jail. No civil disability or other infamous result followed. Practically all misdemeanors are punished by imprisonment at hard labor in the sense in which the term is used in this military order. If a prisoner is confined in a county jail he is liable to be put on the road; if in a workhouse, to do whatever task may be assigned him.

In Puerto Rico, according to the report of General Davis for 1899 (page 31), there is a penitentiary at Ponce, and five jails, to one of which, that at Humacoa, Baez

was sentenced to imprisonment. In the penitentiary at Ponce shops are being installed for the manufacture of goods. Men sentenced to imprisonment in the jails of Puerto Rico are required to do work on the roads and do police work in the towns and cities. I understand that Baez is doing work on the roads. This is not "an infamous task." It is the task of ordinary offenders everywhere; I might add, of citizens, for in Ohio every man is required by law to do two days' work on the road every year.

IV.

The provisions of the fifth and sixth amendments requiring an indictment by a grand jury and a trial by a petit jury do not and can not apply to Puerto Rico at the present time, while under military rule and before Congress has provided a form of government. The operation of these guarantees contemplates the existence of the Anglo-Saxon machinery of criminal procedure. You can not have an indictment unless you have a grand jury and you can not have a grand jury unless you have the machinery to select and the material to select from. You must have a civil government and a citizenship determined by law. Neither exists in Puerto Rico to-day. Neither can exist until Congress has acted. It is for Congress to determine the civil rights and political status of the inhabitants of Puerto Rico, and who shall be citizens can not properly be determined until after the 11th of April next, because the Spanish residents have until that time to decide whether they choose to retain their allegiance to Spain or become citizens of the island.

I have already pointed out that the jury system has never been in operation in Puerto Rico. A modified jury system has been in operation in Spain, but it was not extended to Puerto Rico. The people of Puerto Rico have had no experience in the administration of the Anglo-Saxon jury system. The right to be indicted by a grand jury and tried by a petit jury was not possessed by the people of Puerto Rico before the cession, did not pass by the cession, and the treaty itself expressly provides that the civil rights and political status of the inhabitants shall be determined by Congress.

It is a strange contention that as soon as the treaty went into effect the power of the President to preserve order in Puerto Rico ceased. There were no grand juries, no petit juries, no machinery for punishing crime by the processes of the Anglo-Saxon law, and yet, according to the argument of the other side, crime could be punished in no other way. The Constitution which gave the United States the power to acquire territory by treaty, and imposed upon Congress the duty of disposing of and governing it, did not leave the President helpless in the meantime by demanding impossibilities. Until Congress provides for courts and juries in Puerto Rico these guarantees of the Constitution must be held inoperative or the preservation of peace and order and the protection of life and property by the President be abandoned. The situation resembles that discussed in the case of *In re Ross* (140 U. S., 453), where a conviction of murder by a consular court in Japan, acting without a jury and simply upon information, was sustained.

Mr. Justice Field, speaking for the court, said, referring to these guarantees (bottom page 464):

> And, besides, their enforcement abroad in numerous places where it would be highly important to have consuls invested with judicial authority would be impracticable from the impossibility of obtaining a competent grand or petit jury. The requirement of such a body to accuse and to try an offender would, in a majority of cases, cause an abandonment of all prosecution.

The requirement of the sixth amendment that the trial shall be "by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law," shows of itself that the amendment was not intended to apply in the case of unorganized territory, acquired by treaty and held under temporary military occupation awaiting Congressional action.

The provision of article 3, section 2, requiring that the trial by jury shall be held "in the State where the crime shall have been committed, but when not committed within any State the trial shall be at such place or places as the Congress may by law have directed," is plainly inapplicable, because this offense was not committed in a State, and there is no law of Congress directing where the trial of offenses committed in Puerto Rico shall be had.

V.

The constitutional guarantees relating to grand and petit juries have but a limited operation. They do not apply to the States (*Maxwell* v. *Dow*, 176 U. S., p. ——).

They do not tie the hands of the inhabitants of a Territory when organizing a State, nor do they tie the hands of the President in preserving order and protecting life and property pending the action of Congress in organizing newly acquired territory. The court has recognized in the clearest way that trial by jury is not always and everywhere the best mode of trial. It has held not only that the people who organize a State may do away with indictment by a grand jury and trial by a petit jury in criminal cases, but that the legislature of a State may by law abolish trial by jury in some counties and continue it in others (*Missouri* v. *Lewis*, 101 U. S., 21, 31). I quote what this court, speaking by Mr. Justice Brown, said in the recent case of *Holden* v. *Hardy* (169 U. S., 366), because it has an almost prophetic application to the situation in Puerto Rico (p. 389):

> In the future growth of the nation, as heretofore, it is not impossible that Congress may see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws, and systems of administration unchanged. It would be a narrow construction of the Constitution to require them to abandon these, or to substitute for a system which represented the growth of generations of inhabitants a jurisprudence with which they had had no previous acquaintance or sympathy.

JOHN K. RICHARDS,
Solicitor-General.

APRIL 2, 1900.

O

Ex parte BAEZ.

ORIGINAL.

No. . Submitted March 26, 1900. — Decided April 12, 1900.

It is well settled that this court will not proceed to adjudication where there is no subject-matter upon which the judgment of the court can operate: and although the application in this case has not reached that stage, still as it is obvious that before a return to the writ can be made, or any other action can be taken, the restraint of which the petitioner complains would have terminated, the court feels constrained to decline to grant leave to file the petition for a writ of *habeas corpus* and *certiorari;* but, in arriving at this conclusion, it is not to be understood as intimating, in any degree, an opinion on the question of jurisdiction, or the other questions pressed on its attention.

On March 26 a motion was made for leave to file the following petition for the writ of *habeas corpus* and *certiorari:*

"Your petitioner, Ramon Baez, by Tulio Larrinaga, for him-

self and in his behalf, respectfully shows that he is a native-born inhabitant of the island of Puerto Rico, formerly a dependency of the Kingdom of Spain, but at the time of the occurrences hereinafter narrated belonging to and forming a part of the territority of the United States of America.

"Your petitioner was also formerly a subject of his Imperial Majesty the King of Spain, but since long prior to the occurrences herein complained of and ever since, to and including the present time, he has neither owed nor acknowledged allegiance to any other nation or sovereignty than that of the United States of America.

"Your petitioner represents unto this honorable court that he is wrongfully, improperly, unjustly and illegally imprisoned and restrained of his liberty at Humacoa, in and on said island of Puerto Rico, by one Samuel C. Bothwell, called and styled as and being the marshal of the United States provisional court for the department of Puerto Rico.

"By act of Congress approved April 25, 1898, it was declared that a state of war had existed and then existed between the United States of America and the Kingdom of Spain, and thereafter, in the course of the prosecution of such war, the military forces of the United States invaded and conquered the island of Puerto Rico and have ever since remained in possession and control thereof.

"December 10, 1898, a treaty of peace was signed at Paris, France, between the duly accredited representatives of the United States of America and Her Majesty the Queen Regent of Spain; and the same having been duly reported to the Senate of the United States, ratification thereof was advised by the Senate on February 6, 1899, and, having been ratified by the President of the United States on said date and subsequently by Her Majesty the Queen Regent of Spain, ratifications thereof were exchanged at Washington on the 11th day of April, 1899, and the treaty was proclaimed by the President of the United States on the same day.

"By said treaty it was provided, among other things, as follows:

"'ART. II. Spain cedes to the United States the island of Porto

Rico and other islands now under Spanish sovereignty in the West Indies, . . .'

"'ART. XI. All Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such courts, and to pursue the same course as citizens of the country to which the courts belong.'

"Prior to the ratification of said treaty of peace and on or about the 12th day of August, 1898, a protocol or agreement between the United States and the Kingdom of Spain was signed at the city of Washington by the representatives of the two nations, under and by virtue of the terms of which a suspension of hostilities between said nations was declared by the President of the United States.

"By article IV of the said protocol it was agreed that Spain should evacuate Porto Rico and that commissioners should be appointed by the signatory powers for the purpose of arranging and carrying out the details of such evacuation.

"Thereafter an evacuation commission was appointed by the President of the United States, and a similar commission was appointed by the government of Spain, and the commissioners subsequently assembled in the city of San Juan, Porto Rico, and duly arranged the terms of such evacuation, which were accepted by the respective governments, and the evacuation and retirement of the Spanish forces from the island of Puerto Rico occurred on the 18th day of October, 1898.

"Thereupon, and on said date, Major General John R. Brooke, commanding the forces of the United States, in compliance with the orders of the President, assumed the government of the said island of Porto Rico, and by General Order No. 1, of said date, established the military 'Department of Puerto Rico.'

"Said order, among other things, contained the following:

"'The provincial and municipal laws, in so far as they affect the settlement of private rights of persons and property and provide for the punishment of crime, will be enforced unless they are incompatible with the changed conditions of Porto

Rico, in which event they may be suspended by the department commander.'

"Your petitioner further shows that after said 12th day of August, 1898, hostilities ceased to exist in the island of Porto Rico between the forces of the United States and of Spain, and that since the 11th day of April, 1899, war has ceased to exist between the nations, and also since the last-named date, if not prior thereto, there has been and is now a condition of peace existing throughout said island of Porto Rico, and there has been neither a state of war with any foreign power in the said island, nor has there been any internal or domestic rebellions, revolutions or dissensions, nor any failure to recognize the authority and sovereignty of the United States.

"Since the occupation of Porto Rico by the United States authorities the civil courts of that island have been in session exercising the same jurisdiction and in substantially the same form as during the Spanish occupation of the island, and such courts were exercising their ordinary civil and criminal jurisdiction during all of the times hereinafter mentioned.

"On the 27th day of June, 1899, by General Order No. 88, of Brigadier General George W. Davis, United States Army, then commanding the department of Porto Rico, and the supreme military authority in said island, there was established a 'United States Provisional Court for the Department of Porto Rico.'

"Said General Order 88, among other things, provides as follows:

"'SEC. II. The judicial power of the provisional court hereby established shall extend to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution, and to all common law offences within the restrictions hereinafter specified.'

"'SEC. IV. The decisions of said courts shall follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules and records shall conform as nearly as practicable to those observed and kept in said Federal courts. . . .

"'SEC. V. The provisional court shall consist of three judges,

one of whom shall be known as the law judge, and the other two as associate judges, one United States district attorney, one marshal, one clerk, three deputy clerks, one stenographer and reporter, one interpreter, one bailiff and janitor, and one messenger. The law judge shall preside and shall determine and decide all technical questions of law. A majority vote of the bench shall determine all questions of fact. The jury system may be introduced or dispensed with in any particular case in the discretion of the court.

"'SEC. VI. The judges of the provisional court shall be clothed with the powers vested in the judges of the circuit or district courts of the United States.

"'SEC. VII. The district attorney shall be authorized to present to the court information against all parties for violations of United States statutes and regulations. He shall also in like manner present informations for violations of orders issued by the department commander relating to civil matters, which may be referred to him from these headquarters. . . .

"'SEC. VIII. In order to define more clearly certain branches of the criminal jurisdiction of the provisional court, it is hereby provided that it shall include and be exclusive in the following classes of cases:

"'1st. All offences punishable under the statutory laws of the United States, such as those indicated in paragraph I of this order.

"'2d. Offences committed by or against persons, foreigners or Americans, not residents of this department, but who may be traveling or temporarily sojourning therein, or against the property of non-residents.

"'3d. Offences against the person or property of persons belonging to the army or navy, or those committed by persons belonging to the army or navy, not properly triable by military or naval courts; but not including minor police offenses.

"'4th. Offences committed by or against foreigners or by or against citizens of another State, district or Territory of the United States, residing in this department.'

"'SEC. XI. If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall

be granted such party before the execution of such judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree. But if at the end of said ninety days such process has not been issued by the Supreme Court execution shall forthwith issue.'

"'SEC. XVI. The court shall adopt an appropriate seal which shall be procured by the treasurer of the island. The clerk of the court shall have the custody of the seal for use in attesting legal documents in the usual manner.

"'SEC. XVII. In accordance with the provisions of paragraph V of this order the following appointments are announced to take effect July 1st, 1899.'"

[Here followed the designation of a "law judge;" a "provisional United States Attorney;" two military officers as "associate judges;" and another as "clerk."]

"'Private Samuel C. Bothwell, troop D, 5th U. S. cavalry, is detailed on special duty as marshal of the U. S. provisional court.'

"By General Order 216 of said department, dated December 18, 1899, section XI of General Order 88, hereinbefore set forth, was amended so as to read as follows:

"'If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree.

"'For good cause, this court may extend the time of filing such application and record in the office of the clerk of the supreme or appellate court aforesaid.

"'The stay of execution granted by this court shall be in force until the final disposition of the case by the supreme or appel-

late court aforesaid, provided that the party availing himself of the provisions of this section shall not be guilty of negligence in prosecuting his application before the said supreme or appellate court.'

"On the 21st day of September, 1899, by General Order 145 of said department, issued by Brigadier General George W. Davis, United States Army, as aforesaid, provision was made for the holding of municipal elections in said island of Porto Rico, and certain rules and regulations governing the right of the inhabitants to vote at such elections and the manner of exercising such suffrage were therein provided for, among others the following:

"'SEC. V. An elector to vote at such elections shall possess the following qualifications:

"'*a.* He must be a *bona fide* male resident of the municipality.

"'*b.* He must be over twenty-one years of age.

"'*c.* He must be a taxpayer of record at the date of his registration, or he must be able to read and write.

"'*d.* He must have resided upon the island of Puerto Rico for two years next preceding the date of his registration, and for the last six months of said two years within the municipality where the election is held.'

"Thereafter, by General Orders 160 of said department, issued October 12, 1899, General Orders 145 were amended so as to read in part as follows:

"'SEC. VIII. He must be a taxpayer of record in the municipality in which he votes at the date of this order, or he must be able to read and write. Persons who pay insular or municipal taxes of any kind, in their own right or name, or in the name of their lawful wife or minor child, or the members of a firm, corporation or copartnership, paying taxes, and the heirs of an estate that pay taxes, are deemed taxpayers under the meaning of this clause. But administrators, guardians, trustees, agents or other persons who pay taxes for other than themselves or their lawful family are not taxpayers within its meaning through such payment.'

"'SEC. XVI. Any person who fraudulently votes, or attempts

or offers to fraudulently vote, or attempts to influence or control others to fraudulently vote, at any public election, shall, upon conviction thereof, be subject to a fine not exceeding one hundred dollars, or to imprisonment at hard labor not exceeding three months, or to both such fine and imprisonment, in the discretion of the court.'

"Thereafter, by special orders of the military authorities commanding the said department, an election was ordered to be held on the 31st day of October, 1899, in the city of Guayama, Porto Rico, for the election of the ordinary municipal officers of said city to fill the offices in the plan of civil government established by the military authority of the United States.

"Your petitioner represents that, being duly qualified in accordance with law and the general orders aforesaid, he voted at said election for the candidates of the party to which he belonged, and thereafter, on or about the 10th day of November, 1899, he was arrested and taken into custody by one Samuel C. Bothwell, marshal of said United States provisional court of the Department of Porto Rico, and brought before said provisional court, and was there charged by the district attorney thereof, in an information or complaint which was read to him, with having illegally voted at the said election in the city of Guayama heretofore mentioned.

"Your petitioner pleaded 'Not guilty' to said charge, and thereafter said United States provisional court proceeded to try him for said alleged offence, although your petitioner objected to the jurisdiction of said court and denied that he had committed any crime or offence cognizable by said court, and further objected on the ground that no presentment or information had been returned by a grand jury, and further that he was deprived of a trial by jury in said cause, a jury trial having been demanded by him and refused by said court.

"After hearing the evidence in said proceeding, said provisional court found your petitioner 'Guilty,' and sentenced him to imprisonment at hard labor in the jail of Humacao, Porto Rico, for a period of thirty days.

"Thereupon, in accordance with the provisions of section XI of General Orders 88, as amended and heretofore referred to,

your petitioner applied for a stay of execution of ninety days, to permit him to make application to this honorable court for a writ of certiorari or other suitable process, to review the action, and to set aside the judgment of said provisional court.

"Such application was granted; and the time allowed under said section having expired, your petitioner has been taken into custody by the said Samuel C. Bothwell, marshal as aforesaid, and is by him now unlawfully restrained of his liberty and compelled to perform infamous tasks.

"The proceedings of said United States provisional court are set forth at large in the duly certified copy of the transcript of the record in said court submitted herewith.

"Your petitioner further alleges that he is advised that said United States Provisional Court for the Department of Porto Rico had no jurisdiction or lawful authority under the Constitution and laws of the United States to cause the arrest of your petitioner or to proceed against him in manner and form aforesaid, and that said pretended process, arrest, order, trial and judgment, and warrant whereby your petitioner was committed to the custody of said Samuel C. Bothwell, and whereby, in custody of said Samuel C. Bothwell, he is imprisoned and restrained of his liberty, as aforesaid, were and are, each and all of them, in violation of the Constitution of the United States and the just rights of your petitioner, and are without authority of law and void.

"Your petitioner further alleges that said United States provisional court had no jurisdiction to try him for the alleged offence with which he is charged for the reasons following, among others:"

[The reasons were here set forth at length.]

"Your petitioner further avers that more than thirty other persons, residents of said island of Porto Rico, were apprehended and tried by said provisional court upon the same or similar charges to those preferred against him, and such persons were likewise found guilty and sentenced to undergo like punishment, but the sentences of the court in such other cases have been stayed pending the determination of your petitioner's application herein."

[Here followed the prayer.]

The petition was signed: "Ramon Baez, by Tulio Larrinaga;" and was verified as follows:

"DISTRICT OF COLUMBIA, *ss:*

"Tulio Larrinaga, being duly sworn, deposes and says:

"That he is an inhabitant of Porto Rico and knows the petitioner, Ramon Baez;

"He has read the foregoing petition by him subscribed and knows the contents thereof, and —

"That the matters and things therein stated are true of his own knowledge except as to matters therein stated on information or belief, and as to those matters he believes them to be true.

"Further, this petition is signed and verified by him for and on behalf of the said Ramon Baez for the reason that the petitioner is confined in the island of Porto Rico, and to delay this application by sending the same for the signature and affidavit of the petitioner himself would greatly retard, if not entirely defeat, the relief thereby sought to be obtained.

"TULIO LARRINAGA."

Subscribed and sworn to before a notary public March 24, A. D. 1900.

Mr. Frederic D. McKenney for the motion.

Mr. Solicitor General opposing.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

Application to file this petition was made to the court on March 26, when, under pressure of the mass of business under advisement, we were about to take a recess until April 9, of which recess the bar had been previously advised.

No notice of the application having been given, on suggestion of counsel for the United States, leave was granted, according to the usual course, and in view of the conceded importance of the questions involved, to submit a brief in opposition within a

week, and three days were allowed counsel for petitioner to reply. These briefs were subsequently duly filed.

It appears from the petition and accompanying papers that the alleged proceedings against petitioner were stayed at his instance, from December 11 until March 16 to enable him to apply to this court in the premises, but no such application was made. And it further appears that petitioner was not restrained of his liberty until up to March 16, and that such restraint was to continue for thirty days from that date, which would expire April 15.

The petition is not signed or verified by Baez, but on his behalf, and the affidavit does not state that the application is made by authority or at the request of Baez, or any facts showing that he was unable to make it, except the averment by affiant that "this petition is signed and verified by him for and on behalf of the said Ramon Baez for the reason that the petitioner is confined in the island of Porto Rico, and to delay this application by sending the same for the signature and affidavit of the petitioner himself would greatly retard, if not entirely defeat, the relief thereby sought to be obtained." The affidavit was sworn to on the 24th of March in the District of Columbia.

Assuming, however, that the application is made in accordance with the wishes of Baez, we should have been better satisfied if the delay in the presentation of the petition had been accounted for. The fact that on March 24 it was impracticable to send to Porto Rico to petitioner for him to act, does not explain why the assertion of his alleged rights was delayed so long, but rather shows that our interposition would be unavailing, if we took jurisdiction.

Section 756 of the Revised Statutes provides in relation to the writ of *habeas corpus:* "Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond the distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days." This section was taken almost literally from the Habeas Corpus Act, chap. 2 of the 31st Car. II, which was designed to remedy procrastination

and trifling with the writ. Prior to that act the mode of compelling a return was by taking out an *alias*, and then a *pluries* writ, and thereafter issuing an attachment. A reasonable time has always been allowed for making the return, and it is not to be presumed that one will not be made. *Stockdale* v. *Hansard*, 8 Dowling, 474; *Mash's Case*, 2 Wm. Bl. 805. And see *United States* v. *Bollman et al.*, 1 Cr. C. C. 373, where the Circuit Court of the District of Columbia refused to issue an attachment until three days had expired after the service of the writ. Hurd on Hab. Corp. (2d ed.) 236; Church on Hab. Corp. (2d ed.) § 126.

In this case, if the writ of *habeas corpus* had been issued April 9, the next court day after the petition for the writ was presented to this court, the imprisonment of petitioner would have expired six days after the issue of the writ, and fourteen days before the person having him in custody would be required to make his return, and, before the case could be heard upon the writ and return the prisoner would no longer be in custody.

The grave questions of public and constitutional law sought to be brought into judgment by this application would have become merely moot questions so far as the decision thereof could affect any right or interest of the petitioner. And this would be so even if we issued the writ and attempted to deal with the prisoner by a preliminary order. Before he could be communicated with and brought before us he would be freed from restraint. *In re Callicott*, 8 Blatchford, 89.

As was said in *Stockdale's case*, we cannot presume that a return would not be made, and even if made at once, as it must be made from Porto Rico, it would nevertheless be too late for any action of ours to be effectual.

True the issue of the writ might be waived by the Government or we could enter a rule and proceed in the absence of the prisoner and at once, by agreement, *Medley, Petitioner*, 134 U. S. 160; *In re Burrus*, 136 U. S. 586; but the motion for leave to file has been resisted, and there has been no intimation of a disposition to speed the proceedings. Under these circumstances we cannot shut our eyes to the fact that before definitive action could be had, the application would abate.

Syllabus.

It is well settled that this court will not proceed to adjudication where there is no subject-matter on which the judgment of the court can operate. And although this application has not as yet reached that stage, still as it is obvious that before a return to the writ can be made, or any other action can be taken, the restraint of which petitioner complains would have terminated, we are constrained to decline to grant leave to file the petition.

The situation was the same April 9, and these observations are applicable as of that date.

In arriving at this conclusion we are not to be understood as intimating in any degree an opinion on the question of jurisdiction or other questions pressed on our attention.

Leave denied.